



**OFFICE OF THE
CITY ATTORNEY**

EILEEN M. TEICHERT
CITY ATTORNEY

ASSISTANT CITY ATTORNEYS
RICHARD E. ARCHIBALD
SANDRA G. TALBOTT

SUPERVISING DEPUTY CITY ATTORNEYS
GUSTAVO L. MARTINEZ
MATTHEW D. RUYAK
BRETT M. WITTER

**CITY OF SACRAMENTO
CALIFORNIA**

915 I STREET, FOURTH FLOOR
SACRAMENTO, CA 95814-2604
PH 916-808-5346
FAX 916-808-7455

MAILING ADDRESS:
P.O. BOX 1948
SACRAMENTO, CA 95812-1948

April 28, 2009

DEPUTY CITY ATTORNEYS

MICHAEL J. BENNER
ANGELA M. CASAGRANDA
JOSEPH P. CERULLO
SHERI M. CHAPMAN
LAWRENCE J. DURAN
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CHANCE L. TRIMM
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DAVID S. WOMACK

Statement of Legal Authority

Introduction

This Statement is provided pursuant to the Waste Discharge Requirements for the Cities of Citrus Heights, Elk Grove, Folsom, Galt, Rancho Cordova and Sacramento, and the County of Sacramento, for Storm Water Discharges from Municipal Separate Storm Sewer Systems in Sacramento County, NPDES No. CAS082597, Order No. R5-2008-0142, issued by the California Regional Water Quality Control Board Central Valley Region on September 11, 2008 (hereafter referred to as the "Order"). Section D.6. of the Order provides as follows:

6. *Each Permittee shall provide to the Executive Officer a statement certified by its chief legal counsel that it has adequate legal authority to implement and enforce each of the requirements contained in 40 CFR 122.26(d)(2)(i)(A-F) and this Order, including any modifications thereto in effect when the certified statement is provided. This statement shall be included in Permittees' revised SQIP(s), which shall describe the following:*
 - a. *Citation of urban runoff related ordinances adopted by the Permittees and the reasons they are enforceable;*
 - b. *Progressive enforcement policy and how it will be effectively implemented;*
 - c. *Identification of the local administrative and legal procedures available to mandate compliance with urban runoff related ordinances and therefore with the conditions of this Order;*

- d. *Description of how these ordinances are implemented and how enforcement actions under these ordinances may be appealed; and*
- e. *Description of whether the municipality can issue administrative orders and injunctions or if it must go through the court system for enforcement actions.*
- f. *Description of the Permittee's storm water management structure. There might be different departments that are to develop, implement, and enforce various components of the program. Summarize how the various departments communicate and coordinate activities.*

The following Statement is provided to comply with this requirement, with respect to the City of Sacramento ("City"):

Statement of Legal Authority

a. Citation of urban runoff related ordinances adopted by the Permittee and the reasons they are enforceable:

The primary City ordinance that regulates urban runoff that discharges to the City's MS4 is the City's Stormwater Management and Discharge Control Code, set forth at Chapter 13.16 of the Sacramento City Code. A copy of this ordinance is attached to this Statement as **Exhibit A**.

Another City ordinance that regulates urban runoff and therefore indirectly regulates discharges to the MS4 is the City's Grading, Erosion and Sediment Control Ordinance, set forth at Chapter 15.88 of the Sacramento City Code. A copy of this ordinance is attached to this Statement as **Exhibit B**.

The foregoing ordinances are enforceable because they were duly adopted by the Sacramento City Council and constitute valid municipal enactments that may be enforced by the City pursuant to the City's powers as a charter municipality, as described in section 10 of the Sacramento City Charter:

§ 10 General powers.

The city shall have the right and power to make and enforce all the laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided that nothing herein shall be construed to prevent or restrict the city from exercising or consenting to, and the city is

hereby authorized to exercise, any and all rights, powers and privileges heretofore or hereafter granted or prescribed by the general laws of the state including those specifically applicable to general law cities; provided, also that where the general laws of the state provide a procedure for the carrying out and the enforcement of any rights or powers belonging to the city, said procedure may be followed unless a different procedure is provided or required by the Charter, ordinance or resolution.

b. Progressive enforcement policy and how it will be effectively implemented:

The City's Stormwater Management and Discharge Control Code (Exhibit A) can be enforced through the issuance of administrative penalties pursuant to the provisions of the City's administrative penalty ordinance set forth in City Code section 1.28.010, subsection D (copy attached to this Statement as **Exhibit C**). The City's progressive enforcement policy for the issuance of administrative penalties is described in the Policy for Determining Administrative Penalties for Prohibited Non-Stormwater Discharges attached to this Statement as **Exhibit D**. This policy is effectively implemented by City employees authorized to enforce compliance with the Stormwater Management and Discharge Control Code.

c. Identification of the local administrative and legal procedures available to mandate compliance with urban runoff related ordinances and therefore with the conditions of this Order:

The local administrative and legal procedures available to mandate compliance with the City's Stormwater Management and Discharge Control Code are set forth in Chapter 13.16 of the Sacramento City Code (Exhibit A). The procedures available to mandate compliance with the City's Grading, Erosion and Sediment Control Ordinance are set forth in Chapter 15.88 of the Sacramento City Code (Exhibit B). In addition, administrative penalties may be imposed for violations of the Stormwater Management and Discharge Control Code and the Grading, Erosion and Sediment Control Ordinance pursuant to the City's administrative penalty ordinance (Exhibit C).

d. Description of how these ordinances are implemented and how enforcement actions under these ordinances may be appealed:

The procedures available to mandate compliance with the City's Stormwater Management and Discharge Control Code are implemented by the City "enforcement official," defined in the code as the City's Director of Utilities or any employee or agent of the City authorized to enforce compliance with the Code. In addition, some enforcement actions may involve the participation of other City staff or departments, such as the City Attorney's Office. Procedures for appealing enforcement actions under the City's Stormwater Management and Discharge Control Code are set forth in City Code section 13.16.200 (included in Exhibit A).

The Stormwater Management and Discharge Control Code also provides that if the Sacramento City Council and the governing body of another public agency enter into an agreement authorizing that agency to administer and/or enforce some or all of the provisions of the Code, "enforcement official" also shall mean the authorized official(s) of the agency designated in the agreement as the agency responsible for administering and enforcing the Code, as provided in the agreement. The City has entered into such an agreement with Sacramento County authorizing Sacramento County to administer and enforce the provisions of the City's Stormwater Management and Discharge Control Code with respect to commercial and industrial facilities located in the City. Administrative or civil enforcement actions taken by Sacramento County with respect to such facilities are governed by and conducted pursuant to the County's Stormwater Ordinance, set forth in Chapter 15.12 of the Sacramento County Code, attached to this Statement as **Exhibit E**. Procedures for appealing Sacramento County enforcement actions are set forth in Sacramento County Code section 15.12.540 (included in Exhibit E).

The City's Grading, Erosion and Sediment Control Ordinance is administered for the City by the Department of Utilities through the building permit process, improvement plan process or capital improvement project process, as applicable. (See City Code section 15.88.040, included in Exhibit B.) The Director of the Utilities Department or his or her authorized designees are responsible for implementing the enforcement provisions of the ordinance, which are set forth in Article V of City Code Chapter 15.88, beginning with City Code section 15.88.410 (included in Exhibit B). Procedures for appealing any decision made pursuant to the ordinance are set forth in City Code section 15.88.400 (included in Exhibit B), and Chapter 2.48 of the City Code (copy attached to this Statement as **Exhibit F**).

e. Description of whether the municipality can issue administrative orders and injunctions or if it must go through the court system for enforcement actions.

The City's administrative enforcement powers under the City's Stormwater Management and Discharge Control Code are described in City Code section 13.16.180 (included in Exhibit A). These powers include the implementation of administrative procedures to abate any discharge or condition violating the Code, which are undertaken pursuant to City Code section 13.16.180(A), and Articles V through VIII of Chapter 8.04 of the City Code (copy attached to this Statement as **Exhibit G**), and the imposition of administrative penalties pursuant to the City's administrative penalty ordinance (Exhibit C). City Code section 13.16.180 also authorizes the commencement of civil actions seeking various remedies, and grants arrest and citation authority to any authorized enforcement official.

The City's administrative enforcement powers under the City's Grading, Erosion and Sediment Control Ordinance are set forth in Article V of City Code Chapter 15.88, beginning with City Code section 15.88.410 (included in Exhibit B). The powers include the suspension or revocation of grading approval, the issuance of stop work orders and the abatement of unlawfully created conditions, as described therein. The City also may impose administrative

penalties for violations of the Grading, Erosion and Sediment Control Ordinance, pursuant to the City's administrative penalty ordinance (Exhibit C).

- f. Description of the Permittee's storm water management structure. There might be different departments that are to develop, implement, and enforce various components of the program. Summarize how the various departments communicate and coordinate activities:**

The City's storm water management structure, including a summary of the communication and coordination between affected departments, is described in the City's Stormwater Quality Improvement Plan (see, e.g., Chapter 4, Section 4.2).

Certified by:

EILEEN M. TEICHERT
City Attorney

A handwritten signature in black ink, appearing to read "Joe Robinson", with a stylized flourish at the end.

Joe Robinson
Senior Deputy City Attorney

Table of Exhibits

Exhibit A	Stormwater Management and Discharge Control Code
Exhibit B	Grading, Erosion and Sediment Control Ordinance
Exhibit C	Administrative Penalty Ordinance
Exhibit D	Policy for Determining Administrative Penalties for Prohibited Non-Stormwater Discharges
Exhibit E	Sacramento County Stormwater Ordinance
Exhibit F	Sacramento City Code Chapter 2.48
Exhibit G	Sacramento City Code Chapter 8.04, Articles V through VIII

EXHIBIT A

Sacramento City Code

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[Title 13 PUBLIC SERVICES](#)

Chapter 13.16 STORMWATER MANAGEMENT AND DISCHARGE CONTROL

13.16.010 Title.

This chapter shall be known as the Stormwater Management and Discharge Control Code. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.101)

13.16.020 Purpose and intent.

The purpose of this chapter is to protect and promote the health, safety and general welfare of the citizens of the city by controlling nonstormwater discharges to the stormwater conveyance system, by eliminating discharges to the stormwater conveyance system from- spills, dumping, or disposal of materials other than stormwater, and by reducing pollutants in urban stormwater discharges to the maximum extent practicable. This chapter is intended to assist in the protection and enhancement of the water quality of watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Federal Water Pollution Control Act (Clean Water Act, 33 U.S.C. Section 1251 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) and National Pollutant Discharge Elimination System (NPDES) Permit No. CAS082597, as such permit is amended and/or renewed. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.102)

13.16.030 Definitions.

A. The following words, when used in this chapter, shall have the following meanings:

“Basin plan” means the water quality control plan for Basin 5A and SB, adopted by the Regional Water Quality Control Board, Central Valley Region in July 1975, and all subsequent amendments.

“Best management practices” means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and education practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable the discharge of pollutants directly or indirectly to waters of the United States. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage.

“City” means the city of Sacramento.

“City manager” means the city manager of the city, or his or her authorized designee.

“Commercial and industrial facilities” means commercial and industrial facilities regulated pursuant to the Commercial/Industrial Program requirements specified in Section C.9 of NPDES Permit No. CA5082597.

“Construction general permit” means the General Permit for Stormwater Discharges Associated with Construction Activities issued and administered by the State of California in accordance with applicable provisions of the Federal Clean Water Act and the Porter-Cologne Water Quality Control Act.

“County stormwater ordinance” means the County of Sacramento’s Stormwater Management and Discharge Control Code, set forth in Chapter 15.12 of the Sacramento County Code, and all subsequent amendments.

“Development” means the construction, building or placement of any structure or portion thereof, or any excavation or grading.

“Director” means the director of the city department of utilities or his or her authorized designee.

“Employee training program” means a documented employee training program that a business may be required to implement pursuant to a stormwater pollution prevention plan for the purpose of educating its employees on methods of reducing discharge of pollutants to the stormwater conveyance system.

“Enforcement agency” means the city department of utilities or any other city department authorized to enforce compliance with this chapter. If the city council and the governing body of another public agency enter into an agreement authorizing that agency to administer and/or enforce some or all of the provisions of this chapter, “enforcement agency” also shall mean the agency designated in the agreement as the agency responsible for administering and enforcing the provisions of this chapter, as provided in the agreement.

“Enforcement official” means the director or any employee or agent of the city authorized to enforce compliance with this chapter. If the city council and the governing body of another public agency enter into an agreement authorizing that agency to administer and/or enforce some or all of the provisions of this chapter, “enforcement official” also shall mean the authorized official(s) of the agency designated in the agreement as the agency responsible for administering and enforcing the provisions of this chapter, as provided in the agreement.

“Illegal discharge” means any discharge to the stormwater conveyance system that violates this chapter, or is prohibited by federal, state, or local laws, or which degrades the quality of receiving waters in violation of any plan standard.

“Industrial general permit” means the General Permit for Stormwater Discharges Associated with Industrial Activities issued and administered by the State of California in accordance with applicable provisions of the Federal Clean Water Act and the Porter-Cologne Water Quality Control Act.

“NPDES permit” means a National Pollution Discharge Elimination System permit issued by the Regional Water Quality Control Board or the State Water Resources Control Board pursuant to Division 7, Chapter 5.5 of the California Water Code (commencing with Section 13370) to control discharges from point sources to waters of the United States.

“Noncommercial vehicle washing” means the washing and/or rinsing of passenger vehicles on private property that is not being conducted as a commercial enterprise.

“Nonstormwater discharge” means any discharge to the stormwater conveyance system that is not entirely composed of stormwater.

“Order 2002-0206” means Regional Water Quality Control Board, Central Valley Region Order No. R5-2002-0206, which constitutes NPDES Permit No. CAS082597, together with all amendments and renewals, on file in the office of the city clerk.

“Person” means any person, firm, corporation, partnership, business, public agency, or any other public or private entity.

“Plan standard” means any or all applicable requirements of the basin plan or any other water quality control standard or requirement approved by the Regional Water Quality Control Board, Central Valley Region, the State Water Resources Control Board or the federal Environmental Protection Agency that applies to any of the receiving waters.

“Pollutant” means any contaminant that can degrade the quality of the receiving waters in violation of any plan standard.

“Premises” means any building, lot, parcel, land or portion of land whether improved or unimproved.

“Receiving waters” means surface bodies of water as described in Order 2002-0206, including creeks and rivers, that serve as discharge points for the stormwater conveyance system.

“Stormwater” means surface runoff and drainage associated with storm events that is free of pollutants to the maximum extent practicable.

“Stormwater conveyance system” means those artificial and natural facilities within the city, whether publicly or privately owned, by which stormwater may be conveyed to a watercourse or waters of the United States, including any roads with drainage systems, streets, catch basins, natural and artificial channels, aqueducts, stream beds, gullies, curbs, gutters, ditches, open fields, parking lots, impervious surfaces used for parking, and natural and artificial channels or storm drains. “Stormwater conveyance system” does not include any facilities that convey stormwater to the city’s combined sewer system that collects and conveys both sanitary sewage and stormwater and surface runoff for treatment in accordance with applicable sewage treatment requirements, and that is regulated by Chapter 13.08 of this code in accordance with the provisions of a separate NPDES permit issued to the city for the combined sewer system.

“Stormwater pollution prevention plan” means a document that describes the best management practices to be implemented by the owner or operator of a business to eliminate prohibited nonstormwater discharges and/or reduce to the maximum extent practicable pollutant discharges to the stormwater conveyance system.

“Unauthorized connection” means any physical connection to the stormwater conveyance system that is not authorized by the city and the Regional Water Quality Control Board, Central Valley Region.

“Watercourse” means any natural stream, whether flowing continuously or not, that is fed from permanent or natural sources, and includes, without limitation rivers, creeks, runs, and rivulets.

B. Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency, as amended, and that are not specifically defined in subsection A of this section shall, when used in this chapter, have the same meaning as set forth in such act or regulations. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.103)

13.16.040 Conflicts with other laws.

In the event of any conflict between this chapter and any federal or state law, regulation, order, or permit, the requirement that establishes the higher standard for public health or safety shall govern. Nothing in this chapter shall preclude enforcement of any other applicable law, regulation, order, or permit. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.104)

13.16.050 Discharge of nonstormwater prohibited.

Except as provided in Section 13.16.060 of this chapter, it is unlawful for any person to make or cause to be made any nonstormwater discharge. Notwithstanding the exemptions provided by subsections A and B of Section 13.16.060 of this chapter, if the Regional Water Quality Control Board or the enforcement official determines that any otherwise exempt discharge causes or significantly contributes to violations of any plan standard, or conveys significant quantities of pollutants to any receiving waters, or is a nuisance or poses a risk to public health or safety, it is unlawful for any person to make or cause to be made such discharge to the stormwater conveyance system. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.105)

13.16.060 Exceptions to discharge prohibition.

Subject to the authority granted to the Regional Water Quality Control Board and the enforcement official in Section 13.16.050 of this chapter, the following discharges to the stormwater conveyance system are exempt from the prohibition set forth in Section 13.16.050 of this chapter.

A. Any discharge or connection regulated under a NPDES permit issued to the discharger and administered by the state of California pursuant to Division 7, Chapter 5.5 of the California Water Code, provided that the

discharger is in compliance with all requirements of the permit and all other applicable laws and regulations.

B. Discharges from the following activities that do not cause or contribute to the violation of any plan standard:

1. Potable water line flushing and other discharges from potable water sources;
2. Landscape irrigation and lawn watering;
3. Rising ground waters or springs;
4. Passive foundation and footing drains;
5. Water from crawl space pumps and basement pumps;
6. Air conditioning condensate;
7. Noncommercial vehicle washing;
8. Natural flows from riparian habitats and wetlands;
9. Dechlorinated swimming pool discharges that do not contain biocides or other chemicals, excluding filter backwash water;
10. Flows from fire suppression activities, including fire hydrant flows;
11. Diverted stream flows;
12. Uncontaminated ground water infiltration to separate storm sewers; and
13. Potable water used to wash sediment from streets and parking lots associated with construction sites that have been issued a street washing certification by the Department of Utilities and have implemented required best management practices.

C. Any discharge that the enforcement official, the local health officer, or the Regional Water Quality Control Board determines in writing is necessary for the protection of the public health and safety.

D. Any discharge caused by flooding or other natural disaster that could not have been reasonably foreseen or mitigated in advance by the discharger, as determined by the enforcement official. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.106)

13.16.070 Groundwater discharges.

Discharges of pumped groundwater not subject to a NPDES permit may be permitted to discharge to the stormwater conveyance system upon written approval from the city and in compliance with conditions of approval set forth by the city. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.107)

13.16.080 Discharge in violation of permit.

It is unlawful and a violation of this chapter for any person to make or cause any discharge to the stormwater conveyance system that results in or contributes to a violation of Order 2002-0206. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.108)

13.16.090 Illicit connections prohibited.

It is unlawful and a violation of this chapter for any person to establish, use, or maintain any unauthorized connection. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.109)

13.16.100 Concealment and abetting.

It is unlawful and a violation of this chapter to cause, permit, aid, abet or conceal a violation of any provision of this chapter. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.101)

13.16.110 Acts potentially resulting in violation of Federal Clean Water Act and/or Porter-Cologne Act.

Any person who violates any provision of this chapter or any provision of any permit issued pursuant to this chapter or any cease and desist order, prohibition, or effluent limitation, or who discharges waste or wastewater that contains pollutants, may also be in violation of the Federal Clean Water Act (33 U.S.C. 1251 et seq.) and/or Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) and may be subject to the sanctions and remedies of those acts including civil and criminal penalties. The provisions or enforcement of this chapter shall not affect or limit in any way the applicability of those acts nor the enforcement of any sanctions, remedies or penalties under those acts. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.111)

13.16.120 Reduction of pollutants in stormwater.

Any person engaged in activities that may result in pollutants entering the stormwater conveyance system shall, to the maximum extent practicable, undertake the measures set forth below to reduce the risk of nonstormwater discharge and/or pollutant discharge.

A. Business Related Activities.

1. **Stormwater Pollution Prevention Plan.** The enforcement official may require any business in the city engaged in activities that may result in a nonstormwater discharge to develop and implement a stormwater pollution prevention plan, that must include an employee training program. Business activities that may require a stormwater pollution prevention plan include, but are not limited to, maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading or fueling, and cleanup procedures that are carried out partially or wholly outdoors.

2. **Coordination with Hazardous Materials Release Response Plans and Inventory.** Any business for which a hazardous materials release response plan and inventory are required under Chapter 6.95 (commencing with Section 25500) of Division 20 of the California Health and Safety Code, shall include in that plan provisions demonstrating compliance with this chapter, and requiring the release of pollutants to be reduced to the maximum extent practicable.

3. **Coordination with Hazardous Waste Generator Contingency Plan and Emergency Procedures.** Any business for which a hazardous waste generator contingency plan and emergency procedures are required pursuant to California Code of Regulations, Title 22, Sections 66265.51 to 66265.56, shall include in that plan provisions demonstrating compliance with this chapter, and requiring the release of pollutants to be reduced to the maximum extent practicable.

4. Any person conducting business or industrial activities in the city shall prevent pollutants from entering the stormwater conveyance system and shall comply with all applicable federal, state and local laws, ordinances or regulations.

B. Development.

1. The enforcement official may establish and impose such controls as the enforcement official determines to be appropriate to minimize the long-term, post-construction discharge of stormwater pollutants from new development or modifications to existing development. Controls may include source control measures to prevent pollution of stormwater and/or treatment controls designed to remove pollutants from stormwater.

2. Any person conducting development in the city shall prevent pollutants from entering the stormwater conveyance system and shall comply with all applicable federal, state and local laws, ordinances or regulations, including but not limited to the City Grading, Erosion and Sediment Control Ordinance set forth in Chapter 15.88 of this code.

C. Compliance with General Permits. Any person conducting business, industrial, construction or development activities that are subject to a general stormwater permit issued by the United States Environmental Protection Agency, the State Water Resources Control Board, the Regional Water Quality Control Board, Central Valley Region or the city of Sacramento, including the construction general permit and the industrial general permit, shall comply with all requirements of such permit. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.112)

13.16.130 Compliance with best management practices.

Every person undertaking any activity or use of a premises that may cause or contribute to stormwater pollution or contamination, illegal discharges, or nonstormwater discharges shall: (1) comply with best management practices guidelines or pollution control requirements established or imposed by the enforcement official; and (2) properly operate and maintain any treatment control device or other measures utilized on the premises to prevent or reduce, to the maximum extent practicable, stormwater pollution or contamination, illegal discharges or nonstormwater discharges, as required by the enforcement official. (Ord. 2004-042 § 1 (part))

13.16.140 Containment and notification of spills.

Any person owning or occupying a premises who has knowledge of any release of pollutants or prohibited nonstormwater discharge from the premises that might enter the stormwater conveyance system, other than a release or discharge that is permitted by this chapter, shall immediately take all reasonable action to contain and abate the release of any pollutants or prohibited nonstormwater discharge, and shall notify the enforcement agency as soon as reasonably possible of the release of any pollutants or prohibited nonstormwater discharge. (Ord. 2004-042 § 1 (part))

13.16.150 Commercial and industrial facilities—Inspection and enforcement by Sacramento County.

A. The city and Sacramento County are co-permittees under NPDES Permit No. CA5082597. The permit requires regular compliance inspections and enforcement at certain commercial and industrial facilities as defined by the permit. Sacramento County operates an inspection, investigation and enforcement program that enforces compliance with environmental and water quality requirements by commercial and industrial facilities located within the County.

B. Under Article 11, Section 8 of the California Constitution, and applicable provisions of the city and Sacramento County Charters, the city and Sacramento County may enter into agreements for Sacramento County to perform specified municipal functions within the city.

C. To provide for effective and efficient administration and enforcement of this chapter with respect to commercial and industrial facilities located on premises within the city that discharge to the stormwater conveyance system, and to ensure compliance with Order 2002-0206, the city council and the Sacramento County Board of Supervisors may enter into an agreement or agreements for Sacramento County to administer and enforce the provisions of this chapter with respect to these commercial and industrial facilities, by including these commercial and industrial facilities in Sacramento County's commercial and industrial compliance program. If the city council and the Sacramento County Board of Supervisors enter into such an agreement or

agreements:

1. Sacramento County and its authorized official(s) and employee(s) shall enforce the provisions of this chapter as they apply to commercial and industrial facilities located on premises within the city that discharge to the stormwater conveyance system, in accordance with the provisions of the agreement(s); and
2. Sacramento County, and its authorized official(s) and employee(s), shall be authorized to take any action that may be taken by the "enforcement agency" and "enforcement official," respectively, with respect to these commercial and industrial facilities, in accordance with the provisions of this chapter and the agreement(s); and
3. Sacramento County may establish and collect from these commercial and industrial facilities such fees as may be necessary to cover the actual costs incurred by Sacramento County to include facilities in its commercial and industrial compliance program, provided that the fees are established and collected uniformly within and outside of the city, and in accordance with the provisions of the agreement(s) and all applicable legal requirements. (Ord. 2004-042 § 1 (part))

13.16.160 Inspection authority.

Whenever necessary to make an inspection of any building or premises to enforce any of the provisions of this chapter, or whenever an authorized enforcement official has reasonable cause to believe that there exists in any building or upon any premises any condition that constitutes a violation of this chapter, the enforcement official may enter such building or premises at all reasonable times to perform an inspection, as well as any of the other activities authorized by this section. Any request for entry shall state that the property owner or occupant has the right to refuse entry and if entry is refused, entry may be made upon issuance of a judicial order. If the owner or occupant refuses entry after this request has been made, the enforcement official is empowered to seek authorization from any court of competent jurisdiction for such entry. The enforcement official may request a judicial order authorizing and/or compelling the performance of some or all of the activities authorized by this section.

During any inspection, the enforcement official may collect samples as necessary in order to implement and enforce the provisions of this chapter. This authority shall include the right to require the installation of sampling and metering devices on private property, or to require the person owning or occupying the premises to supply samples.

During any inspection, the enforcement official may require the person owning or occupying the premises to provide any and all records relating to any potential stormwater contamination, illegal discharge, nonstormwater discharge or other violation of this chapter, for review and copying.

The enforcement official shall identify buildings or premises for inspection based upon such reasonable selection processes as the enforcement official determines to be necessary to carry out the objectives of this chapter, including but not limited to: random sampling; sampling in areas with evidence of stormwater contamination, illegal discharge, or nonstormwater discharge to the stormwater conveyance system; and similar factors. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.101)

13.16.170 Monitoring, analysis and reporting authority.

Whenever an authorized enforcement official has reasonable cause to believe that there may exist on any premises a condition that constitutes a violation of this chapter, the enforcement official may require monitoring, analysis and/or reporting of discharges from the premises to the stormwater conveyance system, by serving a written notice of such requirement(s) on the owner of the premises or on the operator of a facility or activity on the premises. The cost of complying with these requirements shall be borne by the owner of the premises or the

operator of the facility or activity for which monitoring, analysis and/or reporting has been required, to the extent permitted by law. (Ord. 2004-042 § 1 (part))

13.16.180 Enforcement.

In addition to the exercise of enforcement powers authorized or provided elsewhere in this code, this chapter may be enforced by any of the means set forth in this section.

A. Abatement.

1. Any discharge or condition violating any of the provisions of this chapter is a threat to the public health, safety and welfare and constitutes a public nuisance.

2. The enforcement official may commence and carry out proceedings for the abatement of any discharge or condition violating any provision of this chapter, in accordance with the provisions of Articles V and VI of Chapter 8.04 of this code, commencing with Section 8.04.110 of this code. Such actions or decisions of the enforcement official shall be subject to appeal as provided for in Article V and Article VI of Chapter 8.04 of this code. The notice and order issued by the enforcement official under Section 8.04.110 of this code may require the owner and/or occupant of the subject premises to take any or all of the following actions:

i. Submit and implement a plan approved by the enforcement official for the correction and prevention of the discharge or condition violating any provision of this chapter;

ii. Cease and desist all activities that may cause or contribute to any discharge or condition violating any provision of this chapter;

iii. Clean up any release of pollutants causing or resulting from the violation of any provision of this chapter;

iv. Mitigate any circumstances that may cause or contribute to any discharge or condition violating any provision of this chapter; and

v. Adopt and implement best management practices and/or a stormwater pollution prevention plan approved by the enforcement official.

3. If any violation of this chapter constitutes a seasonal and recurrent nuisance, the enforcement official shall so declare in the notice and order issued pursuant to subsection 2, above. Thereafter, the owner or occupant of the subject premises shall abate such seasonal and recurrent nuisance every year without the necessity of any further notice and order. If at any time the nuisance is not abated as required herein, the enforcement official may summarily abate the condition in accordance with the provisions of Article VII of Chapter 8.04 of this code, commencing with Section 8.04.330 of this code.

4. When, in the opinion of the enforcement official, any discharge from any source to the stormwater conveyance system causes or threatens to cause a condition that presents an imminent hazard to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit, the enforcement official may issue a notice requiring the owner or occupant of the premises where the discharge is occurring to immediately abate the discharge. In any case where the discharge is not immediately abated, or for any reason the owner or occupant of the subject premises does not receive the notice, or the enforcement official determines that time constraints are such that abatement must occur without providing the notice, the enforcement official may summarily abate the condition in accordance with the provisions of Article VII of Chapter 8.04 of this code, commencing with Section 8.04.330 of this code.

5. The owner of any premises in the city from which is made a discharge in violation of this chapter, and any person making or causing to be made the discharge, if different from the owner, shall be jointly and severally liable for the costs incurred by the city for any abatement, clean-up or restoration, including any related inspection and testing costs, arising from the discharge, and the cost therefor shall be invoiced to the owner of

the premises. If the invoice is not paid within sixty (60) days, the enforcement official may commence proceedings for recovery of these costs in accordance with the provisions of Article VIII of Chapter 8.04 of this code, commencing with Section 8.04.370 of this code.

B. Civil Actions.

In addition to any other remedies or penalties provided in this chapter, any violation of this chapter may be enforced by civil action brought by the city attorney. In any such action, the city may seek, as appropriate, any or all available equitable and legal remedies, including but not limited to:

1. A temporary and/or permanent injunction;
2. Assessment of the violator for the costs of any investigation, inspection, testing or monitoring related to the violation, and for the reasonable costs of preparing and bringing legal action under this subsection, including attorney fees, whether for in-house or outside counsel;
3. Costs incurred in removing, correcting, abating, cleaning up, or terminating the adverse effects resulting from the violation;
4. Compensatory damages for damage, loss or destruction to water quality, wildlife, fish and aquatic life, or public health and safety;
5. Payment or reimbursement of any governmental fines or penalties imposed on the city as a result of the violation;
6. Civil penalties imposed either on a daily basis or a per gallon basis, but not both, for any discharge of nonstormwater to the stormwater conveyance system violating any provision of this chapter. Civil penalties imposed on a daily basis shall not exceed five thousand dollars (\$5,000.00) for each day or portion of a day that the discharge occurs, and civil penalties imposed on a per gallon basis shall not exceed ten dollars (\$10.00) for each gallon of the discharge. The amount of civil penalties imposed shall be determined by taking into consideration some or all of the following factors: the nature, circumstances, extent, and gravity of the discharge, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, the economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

C. Enforcement by Sacramento County. If the city council and the Sacramento County Board of Supervisors enter into an agreement for Sacramento County to administer and enforce the provisions of this chapter with respect to commercial and industrial facilities located on premises within the city that discharge to the stormwater conveyance system, pursuant to Section 13.16.150 of this chapter, any administrative or civil enforcement by Sacramento County of any provision of this Chapter with respect to such facilities shall be governed by and conducted pursuant to Chapter 15.12 of the Sacramento County Code, and the provisions of subsections A and B of this section shall not apply.

D. Criminal Violations.

1. Any violation of this article shall be punishable as a misdemeanor.
2. The enforcement official shall have and is vested with the authority to arrest or cite and release any person who violates any section of this chapter in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanors or infractions as described by Chapters 5, 5(c), and 5(d) of Title 3, Part 2 of the California Penal Code, including Section 853.6 (as the same may hereafter be amended). It is the intent of the city council that the immunities prescribed in Section 836.5 of the California Penal Code be applicable to public officers or employees acting in the course and scope of employment pursuant to this chapter.

E. Administrative Penalties. In addition to any other remedy or penalty set forth in this chapter or this code, administrative penalties may be imposed pursuant to applicable provisions of Title 1 of this code against any

responsible party, whether owner, lessee, sublessor, sublessee or occupant of any premises in violation of any of the provisions of this chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to Title I of this code.

F. Remedies and Penalties Cumulative. The foregoing remedies and penalties are in addition to and do not supersede or limit any and all other remedies and penalties, civil or criminal, including any remedies or penalties authorized for violations of the Federal Clean Water Act or Porter-Cologne Water Quality Control Act. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.118)

13.16.190 Remedies not exclusive.

The remedies provided for in this chapter shall be cumulative and not exclusive. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.119)

13.16.200 Appeal.

A. If a decision or action of the enforcement official is not subject to an appeal procedure under any other provision of this chapter or code, any person who is affected by the enforcement official's decision or action may appeal the decision or action to the city manager within ten (10) days following the effective date of the decision or action, by filing a written appeal with the city manager. Upon receipt of such appeal, the city manager may request a report and recommendation from the authorized enforcement official and shall set the matter for an informal hearing at the earliest practical date. Not less than seven days prior to the date of hearing, the city manager shall provide written notice of the hearing to the person appealing the decision or action of the enforcement official. At the hearing, the appellant may be represented by any person of appellant's choice. The city manager shall hear any additional evidence presented by the appellant or the enforcement official, and may reject, affirm or modify the enforcement official's decision. The city manager's decision shall be the city's final administrative determination of the matter.

B. If the city council and the Sacramento County Board of Supervisors have approved an agreement for Sacramento County to administer and enforce the provisions of this chapter with respect to commercial and industrial facilities located on premises within the city that discharge to the stormwater conveyance system, pursuant to Section 13.16.150 of this chapter, any appeal of any action taken by Sacramento County or its officers or employees with respect to such facilities shall be governed by and conducted pursuant to the Sacramento County Code, and the provisions of this section shall not apply. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.120)

13.16.210 Disclaimer of liability.

The degree of protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific, engineering, and other relevant technical considerations. The standards set forth herein are minimum standards and this chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into the waters of the United States. This chapter shall not create liability on the part of the city or Sacramento County, nor their respective officers and employees, for any damages that result from reliance on the code or any administrative decision lawfully made thereunder. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.121)

13.16.220 City or county authority.

Except for decisions required to be made by the City Council and/or the Sacramento County Board of

Supervisors, the enforcement official is authorized to make any decision on behalf of the city or Sacramento County, as applicable, required or called for by this chapter. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.122)

13.16.230 Judicial review.

The provisions of California Code of Civil Procedure Section 1094.5 and Section 1094.6 are applicable to judicial review of city or Sacramento County decisions pursuant to this chapter. (Ord. 2004-042 § 1 (part); Ord. 98-007 § 1 (part); prior code § 87.01.1231)

EXHIBIT B

Sacramento City Code

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Chapter 15.88 GRADING, EROSION AND SEDIMENT CONTROL

Article I General Provisions and Requirements

15.88.010 Title.

This chapter shall be known as the grading, erosion, and sediment control ordinance of the city of Sacramento, and shall be referred to herein as the "grading ordinance." (Prior code § 9.31.1501)

15.88.020 Purpose.

The grading ordinance is enacted for the purpose of regulating grading on property within the city limits of the city to safeguard life, limb, health, property and the public welfare; to avoid pollution of watercourses with nutrients, sediments, or other materials generated or caused by surface water runoff; to comply with the city's national pollution discharge elimination system (NPDES) Permit No. CA0082597, provision D2, issued by the California regional water quality control board; and to ensure that the intended use of a graded site within the city limits is consistent with the city general plan, any specific plans adopted thereto and all applicable city ordinances and regulations. The grading ordinance is intended to control all aspects of grading operations within the city limits of the city. (Prior code § 9.31.1502)

15.88.030 Scope.

The grading ordinance sets forth rules and regulations to control land disturbances, landfill, soil storage, pollution, and erosion and sedimentation resulting from construction activities. The grading ordinance establishes procedures for issuance, administration and enforcement of permits for such activities. Any grading within the city limits of the city shall conform to provisions of the grading ordinance and other applicable provisions of the city code, including but not limited to, the latest edition of the city standard specifications for public works construction, Sacramento city/county drainage manual, and city manual of standards and improvement standards.

The director shall adopt a manual of standards entitled "Administrative and Technical Procedures Manual for Grading, Erosion, and Sediment Control" setting forth the administrative procedures and technical requirements necessary to implement the provisions of the grading ordinance. The director shall have the authority to change, update or revise this manual as necessary at his or her sole discretion, to implement the provisions of the grading ordinance. (Prior code § 9.31.1503)

15.88.040 Administration.

The grading ordinance shall be administered for the city by the department of utilities through the building permit process, improvement plan process or capital improvement project process, as applicable. (Ord. 2001-014 § 2: prior code § 9.31.1504)

15.88.050 Definitions.

Unless the particular provision or the context otherwise requires, wherever the following terms are used in the

grading ordinance, they shall have the meaning ascribed to them in this section:

“Applicant” means any person seeking or receiving grading approval, in accordance with the terms of the grading ordinance, to perform grading after the issuance of a building permit or the approval of improvement plans, or to commence grading prior to such issuance or approval.

“Best management practices” means any program, technology, technique, process, siting criteria, operating method, measure or device which controls, prevents, removes or reduces pollution, erosion, and sediment transport, including but not limited to any best management practices required or implemented under the city’s Stormwater Management and Discharge Control Code, set forth in Chapter 13.16.

“City council” means city council of the city of Sacramento.

“Civil engineer” means a professional engineer registered as a civil engineer by the state of California.

“Compaction” means the increase of density of a soil or rock fill by mechanical means.

“Cut (excavation)” means the removal of naturally occurring earth materials by manual or mechanical means, and the conditions resulting therefrom.

“Director” means director of the department of utilities of the city of Sacramento, or his or her authorized designees.

“Drainage waters” means surface waters which collect, or are accumulated, on the ground and which, by means of drainage ways or water courses, flow off the surface to larger rivers, streams, or lakes. Such waters shall include, but are not limited to, natural precipitation and irrigation waters.

“Drainage way” means a depression in the earth’s surface such as a swale, ravine, gully, slough, draw, hollow, or ditch in which surface water collects for drainage.

“Earth material” means any rock, natural soil or fill and/or any combination thereof.

“Embankment (fill)” means the deposit of soil, rock or other materials placed by artificial means and the conditions resulting therefrom.

“Encroachment permit” means a written permit issued by the department of public works authorizing certain work within a publicly maintained right-of-way.

“Engineering geologist” means a registered geologist certified as an engineering geologist by the state of California.

“Erosion” means the washing or wearing away and transportation of earth material as a result of the movement of wind, water, or ice.

“Erosion and sediment control plan (ESC plan)” consists of a set of best management practices or equivalent measures designed to control surface runoff and erosion, retain sediment on a particular site and prevent pollution of site runoff during the period beginning when any preconstruction- or construction-related grading or soil storage first occurs, until all final improvements and permanent structures are completed.

“Excavation (cut)” means the removal of naturally occurring earth materials by manual or mechanical means, and the conditions resulting therefrom.

“Existing grade” means the elevation of the ground surface at a given point prior to excavating or filling.

“Fill (embankment)” means the deposit of soil, rock or other materials placed by artificial means and the conditions resulting therefrom.

“Finish grade” means the final grade of the site after excavating or filling which conforms to the approved final grading plan. The finish grade is also the grade at the top of a paved surface.

“Geologic hazard” means any condition in naturally occurring earth materials which may endanger life, health or property.

“Geotechnical engineer” means a civil engineer registered by the state of California who is qualified in the field of soil mechanics and soil engineering and has the authority to use the title “soil engineer.”

“Grade” means the vertical location of the ground surface.

“Grading” means any land excavation or filling or combination thereof, or the removal, plowing under or burial of vegetative groundcover.

“Grading plan” means a plan prepared in accordance with this chapter showing grading and related work.

“Manual of standards” means a compilation of administrative procedures, technical standards and design specifications adopted by the city of Sacramento for controlling construction-related grading, surface runoff, erosion and sedimentation. This manual of standards shall be titled “Administrative and Technical Procedures Manual for Grading and Erosion and Sediment Control.”

“Owner” means the legal owner of the property where the grading work is to be done, as shown on the latest equalized assessment roll in the office of the county assessor.

“Parcel (lot)” means the land described as a lot or parcel in a recorded deed or shown as a lot or parcel on a subdivision map or parcel map on file in the Sacramento County recorder’s office.

“Permit” means either a building permit or a separate grading permit.

“Person” means any person, firm, corporation, or public agency whether principal, agent, employee, or otherwise.

“Post construction erosion and sediment control plan (PC plan)” means consists of a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site after all final structures and permanent improvements have been erected or installed.

“Preliminary grading plan” means a plan that shows the proposed grading work in relation to the existing site prepared and submitted with the application for a grading permit.

“Rainy season” means the period of the year during which there is a substantial risk of rainfall. For the purpose of this chapter, the rainy season is defined as from October 1st to April 30th, inclusive.

“Rough grade” means the stage at which the grade approximately conforms to the approved plan.

“Sediment” means any material transported or deposited by water, including soil debris or other foreign matter.

“Site” means any lot or parcel of land or combination of contiguous lots or parcels of land, whether held separately or joined together in common ownership or occupancy, where grading is to be performed or has been performed.

“Slope” means an inclined ground surface the inclination of which may be expressed as the ratio of horizontal distance to vertical distance.

“Soil” means all earth material of any origin that overlies bedrock and may include the decomposed zone of bedrock which can be excavated readily by mechanical equipment.

“Vegetation” means plant life or total plant cover of an area.

“Watercourse” means any natural or manmade channel in which water flows continuously or intermittently in a definite direction and course, or which is used for the holding, delay or storage of waters, or which functions at any time to convey or store stormwater runoff. (Ord. 2003-058 §§ 1—2; prior code § 9.31.1505)

15.88.060 Grading approval required.

Except for the specific exemptions listed hereinafter, no person shall do or permit to be done any grading on any site in the of the city without first obtaining approval of such grading from the director in accordance with

the provisions of the grading ordinance. (Prior code § 9.31.1506)

15.88.070 Exemptions.

The following grading may be done without obtaining grading approval unless grading approval is required in mitigation monitoring agreements or other conditions of project approval. Exemption from the grading approval requirement shall not be deemed as permission to violate any other provision of this chapter.

A. Minor construction projects which meet all of the following requirements:

1. The volume of material graded is less than fifty (50) cubic yards,
2. The depth of cuts and fills is less than two feet,
3. Any drainageway is not blocked or obstructed and its stormwater carrying capacities are not modified,
4. Slopes are less than ten percent and are not left in an unstable or erodible condition;

B. Single family residential lots less than one-half acre that are not part of a larger common plan and residential infill projects less than one-half acre which also meet the requirements of subsection A of this section;

C. Excavations in connection with a swimming pool authorized by a valid building permit;

D. Grading necessary for agricultural operations unless the failure of any cut or fill created by such grading could endanger any structure intended for human or animal occupancy or any public road, or could obstruct any watercourse or drainageway;

E. Exploratory excavations of less than three hundred fifty (350) cubic yards under the supervision of a geotechnical engineer;

F. Routine cemetery excavations and fills;

G. Performance of emergency work necessary to protect life or property when an urgent necessity therefor arises. The person performing such emergency work shall notify the director promptly of the problem and work required;

H. An excavation below finished grade for basements and footings of a building authorized by a valid building permit;

I. Refuse disposal sites controlled by Title 23, Chapter 15, of the California Code of Regulations;

J. The repair and maintenance of levees for river and local drainage control performed by a governmental agency. (Prior code § 9.31.1507)

15.88.080 Grading approval.

Grading approval may be issued by the director in connection with the issuance of a building permit or the approval of improvement plans, or where grading is commenced prior to such issuance or approval, through the issuance of a separate grading permit. (Prior code § 9.31.1508)

15.88.090 Conditions of grading approval.

A. No grading shall be approved unless the project conforms with the city's general plan, any adopted specific or community plans, and applicable city ordinances, including the zoning ordinance and the subdivision ordinance.

B. Where the California Environmental Quality Act (CEQA) requires the preparation and approval of environmental documents concerning a project which will result in grading for which a grading permit is

required under this chapter, no grading shall be approved until all CEQA requirements have been met, including but not limited to mitigation measures relating to protection of threatened and endangered species under applicable federal and state endangered species laws. Where the land proposed to be graded is located within the North Natomas Community Plan Area or the South Natomas Community Plan Area, grading permits may be issued, provided that the conditions contained in Section 15.88.091 are satisfied.

C. Where a proposed grading project requires the filing of a tentative map or the intended use requires approval of a discretionary zoning permit or variance, grading may also require approval from the city planning and building department.

D. Work shall be performed in accordance with the provisions of the grading ordinance and the applicable criteria set forth in the manual of standards.

E. Grading approval shall be limited to work shown on the grading plans as approved by the director. The director may impose any condition deemed necessary to protect the health, safety, and welfare of the public, to prevent the creation of a hazard to public or private property, and/or to assure proper completion of the grading, including but not limited to the following:

1. Mitigation of adverse environmental impacts as disclosed by any environmental document findings, including but not limited to those matters specified in subsection B of this section;
2. Improvement of any existing grading to comply with the standards of the grading ordinance;
3. Requirements for fencing or other protection of grading which would otherwise be hazardous;
4. Requirements for dust, erosion, sediment and noise control, hours of operation and season of work, access roads and haul routes;
5. Requirements for safeguarding watercourses, whether natural or manmade, from excessive deposition of sediment or debris. In no case shall deposition of sediment or debris cause an exceedance of applicable water quality standards;
6. Assurance that the land area in which grading is proposed and for which habitable structures are proposed is not subject to hazards of land slippage or significant settlement or erosion and that the hazards of flooding can be eliminated or adequately reduced;
7. Requirements for safeguarding existing water wells. (Ord. 2001-021 § 1; Ord. 2001-014 § 3: prior code § 9.31.1509)

15.88.091 Requirements for development projects in North and South Natomas.

The city manager is authorized to issue grading permits within the North Natomas Community Plan Area and the South Natomas Community Plan Area only if the city manager finds that the applicant meets all the requirements of subsections A, B, C and D of this section.

A. The applicant has paid to the city (in addition to the "catch-up fee" required by Ordinance No. 2002-018) the full amount of the habitat-conservation fees that have been assessed by the city pursuant to the April 2003 Natomas Basin Habitat Conservation Plan and are then in effect (HCP Fees), including the entire amount and all elements of any increased HCP fees adopted by the Natomas Basin Conservancy ("NBC") and by the city pursuant to a validly enacted ordinance or resolution. The city anticipates receiving an adopted fee increase proposal from the NBC for consideration and adoption. The city shall not issue any grading permit until such time as the entire amount of, and all elements of, the anticipated HCP fee increase become effective or the city has otherwise secured from the applicant a written and unconditional agreement to pay the entire amount of, and all elements of, the increased HCP fees. All HCP fee increases will be included within the obligations to be covered by the agreement required under subsection D of this section.

B. If the applicant prepaid its HCP fees in an amount less than the HCP fees in effect when the grading permit is issued, the applicant has paid a catch-up fee in accordance with Ordinance No. 2002-018 and has paid an amount equal to its fair share of the amount of any HCP fee increase, on a per-acre basis, as reasonably determined by the city.

C. In lieu of the land-acquisition component of any HCP fee required to be paid under subsections A and B of this section, the applicant has transferred to the city or to the NBC fee title or a conservation easement in perpetuity for mitigation land, at the ratio of 0.5 acre of mitigation land for each acre for which the city issues a grading permit, and the applicant has paid other components of the applicable fees. If the number of acres transferred by an applicant to the city or to NBC exceeds the number of acres required to comply with the 0.5:1 mitigation formula set forth in the April 2003 Natomas Basin Habitat Conservation Plan (NBHCP), the city shall grant the applicant a credit against the land-acquisition component of any HCP fee to be paid in the future or, at the applicant's option, the city (either directly or through the NBC) shall pay the applicant, in cash, an agreed-upon amount not to exceed the fair market value of the excess acres of land transferred to the city or to NBC.

D. The applicant has executed an agreement, in a form acceptable to and approved by the city attorney, that requires the applicant and its successors in interest to do the following:

1. Comply with all provisions of the NBHCP;
2. Comply with the Incidental Take Permit and the State Incidental Take Authorization issued in conjunction with the NBHCP;
3. Pay all applicable fee increases and additions, whether adopted by the city before or within six months after issuance of the grading permit (but an applicant who has been specifically and expressly asked by the city manager or designee to pay HCP fees earlier than the date of issuance of a grading permit, and who in fact makes the requested early payment, shall not be subject to the "catch up" provisions of this clause); and
4. Release, defend, and fully indemnify the city and its officers, employees, and agents from and against all costs and damages, including attorney's fees, that may arise in connection with the city's issuance of a grading permit to the applicant, including but not limited to claims (procedural or substantive) that relate to HCP fee increases adopted by the city and arise under California's Mitigation Fee Act (title 7, division 1 of the Government Code, at chapters 6, 7, 8, and 9). (Ord. 2003-031 § 1; Ord. 2002-023 § 1; Ord. 2001-021 § 2)

15.88.100 Liability.

Neither issuance of grading approval under the provisions of the grading ordinance nor compliance with the provisions hereof or with any conditions imposed in a permit issued hereunder shall relieve any person from responsibility for damage to any person or property or impose any liability upon the city for damage to any person or property. (Prior code § 9.31.1510)

15.88.110 Scope of approval.

The issuance of grading approval shall not be construed as an approval of any action or condition constituting a violation of the provisions of the grading ordinance or of any other applicable laws, ordinances, rules or regulations. (Prior code § 9.31.1511)

15.88.120 Water obstruction.

No person shall do or permit to be done any grading which may obstruct, impede, or interfere with the natural flow of storm waters, whether such waters are unconfined upon the surface of the land or confined within land depressions, natural drainage ways, unimproved channels, watercourses, improved ditches, channels or conduits,

in such manner as to cause flooding where it would not otherwise occur, aggravate any existing flooding condition or cause accelerated erosion except where said grading is in accordance with all applicable laws including, but not limited to, the provisions of the grading ordinance. (Prior code § 9.31.1512)

15.88.130 Levee work.

No person shall excavate or remove any material from or otherwise alter any levee adjacent to any river, creek, bay, or local drainage control channel, without prior approval of the governmental agency or agencies responsible for the operation and/or maintenance of the levee. (Prior code § 9.31.1513)

15.88.140 Construction in public right-of-ways.

No person shall perform any grading work within the right-of-way of a public road or street, or within a public easement, without prior written approval of the director, and without obtaining a city encroachment permit. (Prior code § 9.31.1514)

15.88.150 Hazards.

Whenever the director determines that any grading on private property constitutes a condition which could endanger persons or property, or could adversely affect the safety, use or stability of adjacent property, or an overhead or underground utility, or any public way, watercourse or drainage channel, or could adversely affect the water quality of any water bodies or watercourses, the owner of the property upon which the condition is located, or other person or agent in possession or control of said property, upon receipt of notice in writing from the director, shall, within the period specified therein, stop all work. The director may require the submission of plans, soil or geological reports, detailed construction recommendations, drainage study or other engineering data prior to and in connection with any work or activity proposed or required to correct such condition. (Prior code § 9.31.1515)

15.88.160 Not retroactive.

The provisions of the grading ordinance shall not apply to planned or existing construction for which all previously necessary permits and approvals were obtained prior to the effective date of the ordinance codified in this chapter. (Prior code § 9.31.1516)

Article II Application for Grading Approval

15.88.170 Filing of application for grading approval—Permit.

Applications for permits shall be obtained from and filed with the department of planning and development, building inspections division. Each application shall include a plan checking fee, the preliminary or final grading plans and a statement of the intended use of the site. Only one application and permit is allowed for grading work to be done on a site. The director shall determine whether the application is complete in accordance with provisions of Article III of this chapter herein and may require additional information from the applicant before accepting the application as complete. The applicant shall be notified within ten (10) working days if the application is deemed incomplete, and of the requirements for completing the application. (Prior code § 9.32.1601)

15.88.180 Improvement plans in lieu of application for permit.

Where a subdivision improvement plan is being processed in conjunction with either an approved tentative, parcel, or final map; or a site plan is being processed in accordance with the provisions of this code, such plan shall also be considered as an application for grading approval. Such plans shall be reviewed and approved, conditionally approved or denied in accordance with the standards and requirements set forth in the grading ordinance and other applicable city specifications. If an improvement plan or site plan is approved, then a separate grading permit shall not be required. Approval of the improvement plans constitutes approval of the grading work intended. (Prior code § 9.32.1602)

15.88.190 Grading prior to issuance of building permit or approval of improvement plans.

Applicants for a permit to allow grading prior to issuance of a building permit or approval of improvement plans shall meet the following requirements:

- A. Preliminary grading plan shall be submitted for review and approval by the director. This plan shall conform to the requirements of the grading ordinance and any applicable conditions placed on the project as a result of any formal discretionary permit process. The applicant shall acknowledge that any additional grading or revisions to work necessitated by conflicts discovered during the improvement plan check or subsequent construction will be corrected at the applicant's expense.
- B. Both erosion and sediment control plans in accordance with provisions of Article III of this chapter, plans and specifications, of the grading ordinance shall be submitted for review and approval by the director.
- C. A winterization certification shall be submitted for review and approval by the director in accordance with Section 15.88.270 of this chapter.
- D. Plan check and inspection fee deposit shall be required in the amount of the full plan check fee applicable at the time of submittal in accordance with Section 15.88.310 of this chapter.
- E. No grading permit shall be issued until all applicable CEQA requirements have been met. (Prior code § 9.32.1603)

15.88.200 Referral to other public agencies.

The director may refer the application to other interested public agencies for their recommendations. (Prior code § 9.32.1604)

15.88.210 Permission of other agencies or owners.

No application for grading approval shall relieve the applicant of responsibility for securing other permits or approvals, including but not limited to those specified in Section 15.88.090, subsection B, required for work which is regulated by any other department or other public agency, or for obtaining any easements or authorization for grading on property not owned by the applicant. Proof of applicable public agency permits may be required prior to issuance of grading approval. (Ord. 2001-014 § 4; prior code § 9.32.1605)

Article III Plans and Specifications**15.88.220 Application—Plans.**

Five complete sets of plans, as determined by the director, including but not limited to, profiles, cross-sections, topographic maps, erosion and sediment control plans, and accompanying specifications shall be

submitted to the director with each application for grading approval or when otherwise required by the director for enforcement of any provision of this chapter. At the time of application, the applicant may provide preliminary grading plans. Prior to the issuance of grading approval, the applicant must furnish final grading plans and all erosion and sediment control plans. Preliminary grading plans with appropriate changes and additions thereto may be accepted as final grading plans. When the final grading plans and other required documents have been approved, grading approval will be issued by the director. The work shall be done in strict compliance with the approved plans and specifications which shall not be changed or altered except in accordance with the provisions of this chapter. (Prior code § 9.33.1701)

15.88.230 Preliminary grading plans.

Preliminary grading plans provide for review and determination of grading requirements prior to approval of final plans and issuance of grading approval. Precise design at this stage is not required. The plans shall be clearly and legibly drawn and entitled "preliminary grading plan," and shall contain a statement of the purpose of the proposed grading, and shall include all of the information required in the Manual of Standards, Chapter 2, Section 2. (Prior code § 9.33.1702)

15.88.240 Final grading plans.

Final grading plans and specifications shall be prepared and signed by a registered civil engineer, except as otherwise provided herein. In addition to all requirements for preliminary grading plans, the final plans shall include the information required in the Manual of Standards, Chapter 2, Section 2. The director may waive the requirement that all plans and specifications be prepared and signed by a registered civil engineer if the grading would not endanger the public health, safety, or welfare as determined by the director and would not involve or require any of the following:

- A. Cuts and fills with a combined total of three hundred fifty (350) cubic yards or more;
- B. An access road serving five or more existing or proposed residences;
- C. A cut or fill that is located so as to cause unduly increased pressure or reduce support upon adjacent structure of property;
- D. The construction of any drainage or sediment control structures, culverts, or facilities or alteration of any existing drainage course;
- E. The creation or aggravation of an unstable slope condition. (Prior code § 9.33.1703)

15.88.250 Erosion and sediment control plans (ESC plan).

An ESC plan shall be prepared for all projects to control surface runoff and erosion and to retain sediment on a particular site and prevent pollution of site runoff during the period beginning when any preconstruction- or construction-related grading or soil storage first occurs, until all final improvements and permanent structures are complete. The ESC plan shall be prepared and submitted concurrently with the final grading plan. The ESC plan may be incorporated on the same plan sheet as the final grading plan unless it makes the sheet cluttered, or it may be submitted on a clean separate sheet. The separate sheet shall be drawn clearly and legibly and entitled "erosion and sediment control plan," shall contain a statement of the purpose of the proposed best management practices to be used, and shall include all of the information required and contained in the Manual of Standards, Chapter 2, Section 3. (Ord. 2003-058 § 3; prior code § 9.33.1704)

15.88.260 Postconstruction erosion and sediment control plan (PC plan).

The PC plan shall be prepared for all projects to control surface runoff and erosion and retain sediment on a particular site after all planned final improvements and/or structures have been installed or erected. The PC plan shall be prepared and submitted concurrently with the final grading plan. The PC plan shall be drawn clearly and legibly, and entitled "postconstruction erosion and sediment control plan." The PC plan shall contain a statement of the purpose of the proposed best management practices to be used to secure the project after completion, and shall include all of the information required and contained in the Manual of Standards, Chapter 2, Section 4. (Prior code § 9.33.1705)

15.88.270 Winterization certification.

A winterization certification shall be submitted no later than September 15th for all projects where any construction will occur between October 1st and April 30th. Construction that will occur solely in the summer months, between May 1st and September 30th will not be required to submit a winterization certification. The winterization certification shall consist of a written statement or descriptive plan sheet from the owner certifying that the project under construction is prepared for an event which will stop construction, such as rain or snow, that all ESC plan best management practices are in place and operating correctly, that housekeeping practices are maintained and that the site can be left or abandoned safely for an extended period of time during the rainy season without causing any erosion and sediment control problems. If a winterization certification is required and has not been submitted and approved prior to September 16th, the grading approval will be suspended until a winterization certification is submitted and approval obtained. Refer to the Manual of Standards, Chapter 4, Section 5, for additional information regarding winterization certification. (Prior code § 9.33.1706)

15.88.280 Modification of approved plans.

Any modifications of an approved final plan shall be submitted in writing to the director, who shall approve or deny such modification in his or her sole discretion. All necessary soils and geological information and design details shall accompany any proposed modification. Any modification shall be compatible with all subdivision map or land use requirements. (Prior code § 9.33.1707)

15.88.290 General design standards.

Any activities performed under the authority of the grading ordinance, including but not limited to grading, excavation, soil storage, soil transportation, erosion and sediment control measures, shall conform to the general design standards set forth in the Manual of Standards, Chapter 3. (Prior code § 9.33.1708)

Article IV Permit Requirements

15.88.300 General.

The director shall issue grading approval if final grading plans satisfy the provisions of the grading ordinance and the Manual of Standards. The director shall identify the provision, requirement, or condition which has not yet been met or performed by the applicant in the event the issuance of grading approval is denied. (Prior code § 9.34.1801)

15.88.310 Fees.

A. The applicant shall pay a fee to cover the city's costs of reviewing plans, specifications, reports and other materials related to grading approval and performing all engineering services, field investigations,

inspections, routine laboratory tests of materials and compaction or other work or services in connection with the issuance of grading approval or to determine or enforce compliance with any requirement or provision set forth in this chapter or in Chapter 13.16.

B. The fee or fees required by subsection A shall be established from time to time by resolution of the city council and shall be paid to the director either before grading approval is issued or before the issuance of a building permit, or both in accordance with the fee schedule adopted by resolution of the city council. The director may charge additional fees in any case where the city incurs costs that are not covered by the initial fee payment(s).

C. If grading work is done in violation of the grading ordinance or does not comply with the terms and conditions of a grading approval issued for such grading, the violator is required to pay the city for all costs actually incurred by the city to inspect or investigate such violation and to perform inspection and plan checking of work required to correct the violation. (Ord. 2003-058 § 4; prior code § 9.34.1802)

15.88.320 Progress report.

Applicant shall submit periodic progress reports on specified calendar dates and at commencement and completion of specified grading and erosion and sediment control operations. The dates upon which such reports are required and their content shall be as required by the director in the grading approval. (Prior code § 9.34.1803)

15.88.330 Submit record construction drawings.

The applicant shall submit to the director record construction drawings of the final grading plan and erosion and sediment control plans following completion of grading operations. (Prior code § 9.34.1804)

15.88.340 Performance of work—Inspection.

The director may inspect any work done pursuant to the grading ordinance at any time during the course of construction. No person shall be deemed to have complied with the grading ordinance until a final inspection of the work has been made by the director. As a condition of any grading approval, the applicant shall provide the city a right-of-entry and reasonable access, in accordance with Section 15.88.470 of this chapter, to the site during the performance of all work and for a minimum period of one year after acceptance by the director of all improvements pursuant to the grading ordinance. (Prior code § 9.34.1805)

15.88.350 Location of property lines.

Prior to any grading work or related activities, the owner must flag all property corners of the parcel of land to be graded. If the property corners are unknown, or whenever the location of a property line or easement or the title thereto is disputed during the application process or during a grading operation, a survey by a licensed land surveyor or civil engineer or other resolution of the title dispute, all at the expense of the applicant, may be required by the director. (Prior code § 9.34.1806)

15.88.360 Other responsibilities of applicant.

A. Protection of Utilities. The applicant shall be responsible for the prevention of damage to any public utilities or services.

B. Protection of Adjacent Property. The applicant shall be responsible for the prevention of damage to adjacent property. No person(s) shall excavate on land that is so close to the property line as to endanger any adjoining public street, sidewalk, alley, structure or other public or private property or easement without supporting and protecting such property from any damage which might otherwise result.

C. Advance Notice. The applicant shall notify the director at least twenty-four (24) hours prior to the start of work.

D. Erosion and Sediment Control. It shall be the sole responsibility of the applicant to prevent discharge of sediment from the site, in quantities greater than before the grading occurred, to any watercourse, drainage system, or adjacent property.

E. Compliance with Stormwater Management and Discharge Control Code. At all times during the preconstruction and construction of any project for which grading approval is issued until all final improvements and permanent structures are complete, the applicant shall fully comply with all applicable requirements of the city's Stormwater Management and Discharge Control Code, set forth in Chapter 13.16. (Ord. 2003-058 § 5; prior code § 9.34.1807)

15.88.370 Time limits.

All the work required by the permit or grading approval shall be completed within the time limits specified in the permit or approval. If the work cannot be completed within the specified time, a request for an extension of time setting forth the reasons for the requested extension shall be presented in writing to the director no later than thirty (30) days prior to the expiration of the permit or approval. The director shall in his or her sole discretion approve or deny such request. The director may require a new application and fees depending on the time between the expiration date and the extension request, revisions in city regulations, and/or changed circumstances in the immediate area. (Prior code § 9.34.1808)

15.88.380 Transfer of grading approval.

No approval or permit issued under the grading ordinance may be transferred or assigned in any manner whatsoever, without the express written consent of the director. (Prior code § 9.34.1809)

15.88.390 Improvement security required.

A. As a condition for the issuance of grading approval, the director may require the deposit of an improvement security in an amount deemed sufficient by him or her to assure faithful performance of the grading work in the event of default on the part of the applicant. Said security shall be in a form acceptable to the city.

B. In the case of subdivisions, the improvement security shall remain in effect until final inspections have been made and all grading work and subdivision improvements have been accepted by the city.

C. For projects other than subdivisions, the improvement security shall remain in effect until final inspections have been made and all grading work has been accepted by the director.

D. In addition to the improvement security, the director may also require the deposit of maintenance security in an amount deemed sufficient by him or her to guarantee and maintain the grading work performed, to assure the proper functioning of drainage systems and adequate erosion and sedimentation control. Said maintenance security shall be in a form acceptable to the city and shall remain in effect for a period of one year after the date of acceptance of the improvements or grading work, as designated in subsections B and C of this section, or such other periods of time as required by the director.

E. Any deposit required by the director pursuant to this title shall be payable to the city.

F. Upon failure to complete the work, failure to comply with all of the terms of the grading ordinance, or failure of the completed site to function properly to provide proper drainage or erosion and sedimentation control, the city may do the required work, or cause it to be done and collect from the applicant or surety all costs incurred thereto, including administrative and inspection costs. Any unused portion of a deposit shall be refunded to the applicant after deduction by the city of the cost of the work. (Prior code § 9.34.1810)

15.88.400 Appeals.

Appeals of any decision made pursuant to the grading ordinance shall be made to the construction codes advisory and appeals board in writing, setting forth the specific grounds therefor. Such appeals shall be heard and determined in accordance with the procedures set forth in Chapter 2.48 of this code. (Prior code § 9.34.1811)

Article V Enforcement

15.88.410 Enforcement official.

The director shall enforce the provisions of the grading ordinance. (Prior code § 9.35.1901)

15.88.420 Suspension and revocation of grading approval.

The director may suspend or revoke grading approval for good cause. In the event that a suspension or revocation is appealed to the construction codes advisory and appeals board, no work shall be performed pending appeal except as expressly authorized, in writing, by the director. (Prior code § 9.35.1902)

15.88.430 Stop work order.

A. Whenever any work is being done in violation of the provisions of the grading ordinance or any other applicable law, ordinance, rule or regulation, the director may order the work stopped by serving written notice of such violation on any persons engaged in, doing, or causing such work to be done. Any such person shall forthwith stop such work until authorized by the director to proceed with the work. If there are no persons present on the premises, the notice shall be posted in a conspicuous place. The notice shall state the nature of the violation. Any person violating a stop work order shall be guilty of an infraction.

B. Upon receipt of or knowledge of the existence of such stop work notice, the person performing the work shall:

1. Stop work immediately; and
2. Within twenty-four (24) hours, provide the director with a list of remedies which can be immediately undertaken to bring the work into compliance with this title; and
3. Within twenty-four (24) hours after acceptance of such remedies by the director, undertake at the violator's expense, such action as is necessary to bring the work into compliance with this title.
4. If engineering work is required to identify and define the proper course of action, as determined by the director, such work shall be provided by the violator at no cost to the city. (Prior code § 9.35.1903)

15.88.440 Abatement of unlawfully created conditions.

A. Any condition in violation of the grading ordinance is declared to be a public nuisance, subject to

abatement in accordance with Title 8 of this code. In the event that the director determines that a violation has created a condition which is of such a nature to be imminently dangerous to the public health, safety or welfare, such condition may be abated in accordance with the summary abatement procedures set forth at Chapter 8.04, et seq. of this code.

The following conditions are declared to constitute an imminently dangerous condition:

1. When a violation has altered natural drainage patterns and has caused flooding to any downstream or upstream property; or
2. When a violation results in a condition which creates a drainage alteration such that upstream or downstream property may be flooded when weather conditions change and the owner, lessee, or licensee of the property on which the violation exists cannot be found; or
3. When a violation results in a hazard, requiring immediate correction for the preservation of the public health, safety, or welfare; or
4. When a violation results in a discharge or release of significant amounts of sediment which causes or threatens to cause flooding, property damage, or unsafe conditions.

B. The costs incurred by city to abate any nuisance caused by a violation of the grading ordinance shall be assessed against the subject property as a lien or made a personal obligation to the owner of the property as provided in Chapter 8.04, et seq. of this code. Such costs may include, but shall not be limited to, the following:

1. Engineering and design costs;
2. Contractor service bills or public employee wages at cost;
3. Administrative overhead and supervision based on ten (10) percent of all other costs incurred;
4. Interest which shall accrue and be billed at the rate of ten (10) percent of all unpaid amounts from the date of billing;
5. Attorney fees and costs.

C. The abatement procedures set forth in this section are cumulative and in addition to any other rights or remedies which are or may be available to city to correct or cause to be corrected any violation of the grading ordinance, or to abate a condition which is otherwise a public nuisance. (Prior code § 9.35.1904)

15.88.450 Infraction.

Any person violating any provision of the grading ordinance shall be guilty of an infraction. (Prior code § 9.35.1905)

15.88.460 Nonexclusive remedies.

The remedies provided herein are not exclusive, and are in addition to any other remedy or penalty provided by law for violation of the grading ordinance. (Prior code § 9.35.1906)

15.88.470 Right of entry.

Whenever necessary to enforce the provisions of the grading ordinance, the director may enter the premises at all reasonable times to the extent authorized by law to perform any duty imposed by the grading ordinance. If such entry is refused, the director shall have recourse to every remedy provided by law to secure entry. (Prior code § 9.35.1907)

EXHIBIT C

Sacramento City Code

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1.28.010 General penalty—Continuing violations—Imposition of administrative penalties.

A. Criminal Sanctions. Criminal sanctions for violations of mandatory provisions of this code shall be as set forth in Sections 1.28.020 and 1.28.030 and elsewhere in this code.

B. Civil Actions. The city attorney may bring an action in a court of competent jurisdiction to enjoin a violation of any provision of this code or any other ordinance of the city, or to enforce administrative penalties imposed.

C. Administrative Penalties.

1. The purpose of this subsection relating to administrative penalties is to provide alternative remedies to address acts or omissions set forth in subsection (C)(2) of this section. Violations may be corrected, abated or addressed in a number of ways. It is the intent of this subsection to provide the city with additional remedies to correct violations and, where necessary, to penalize violators for failure to comply with city codes and ordinances. The city council hereby finds and determines that enforcement of this code, other ordinances adopted by the city, conditions on entitlements and terms of city agreements are matters of local concern and serve important public purposes. Consistent with its powers as a charter city, the city adopts this administrative penalty provision in order to achieve the following goals:

- a. To protect the public health, safety and welfare of the city;
- b. To provide for an administrative process that has objective criteria for the imposition of penalties and provides for a fair process to appeal the imposition of administrative penalties;
- c. To provide a method to penalize responsible parties who fail or refuse to comply with provisions of this code, ordinances, agreements, or conditions on entitlements in the city;
- d. To minimize the expense and delay where the sole remedy is to pursue responsible parties in the civil or criminal justice system.

The city council establishes an administrative penalty procedure. All final administrative orders made pursuant to the procedures set forth in this subsection shall be subject to review only as provided in California Code of Civil Procedure Sections 1094.5 and 1094.6. Should any court of competent jurisdiction determine that the city must provide an appeal of any final administrative order in a manner other than set forth in Sections 1094.5 and 1094.6, then it is the intent of the city council that the administrative penalty process remain as provided herein and to provide that any appeal which is timely requested follow the procedures set forth in Government Code Section 53069.4.

2. Imposition of Administrative Penalties. In addition to criminal sanctions and other remedies set forth in this code, the city may impose administrative penalties for any of the acts or omissions set forth in this subsection. Administrative penalties shall be imposed, enforced, collected and reviewed in compliance with the provisions of this section. Administrative penalties may be imposed for any of the following acts or omissions:

- a. All violations of this code;
- b. All violations of the city charter and other codes or ordinances adopted by the city, including but not limited to the zoning ordinance;
- c. All violations of uniform codes adopted by the city;
- d. Failing to comply with any order issued by a commission, board, hearing officer or examiner or other

body appointed by the city council and authorized to issue orders, including, but not limited to, the planning commission, the housing code advisory and appeals board, the design commission, the preservation commission, the design director, the preservation director and the zoning administrator;

e. Failing to comply with any condition or requirement imposed on or by any entitlement, permit, contract or environmental document issued or approved by the city.

3. Alternative Remedy. Nothing in this subsection shall prevent the city from using one or more other remedies to address violations. When the violation upon which the administrative penalty is based pertains to building, plumbing, electrical, structural or zoning provisions, the responsible party shall be provided a reasonable period of time to correct the violation prior to imposition of the administrative penalty, except in those cases in which there is an immediate danger to health or safety.

4. Definitions. For purposes of this chapter, the term “responsible party” shall refer to any person, business, company or entity, and the parent or legal guardian of any person under the age of eighteen (18) years, who has done any act for which an administrative penalty may be imposed.

D. Imposition of Administrative Penalties.

1. Notice. Where the city has determined that any responsible party has violated this code or other provisions as set forth in subsection (C)(2) of this section, the city may commence an administrative proceeding to impose administrative penalties. Any department in the city responsible for enforcement of codes or ordinances may initiate administrative penalty proceedings. To commence such proceedings, the department head or designee shall issue an order imposing administrative penalties. The order shall contain:

a. The name and address of the responsible party in violation. If the administrative penalty results from events occurring on, or the status or condition of, property, the order shall also contain the address of the property;

b. A statement from the city official responsible for issuing the order of the acts or conditions which violate this code or other provisions as set forth in subsections (C)(2) of this section and the specific code or provisions which have been violated;

c. The amount of the administrative penalty the city imposes for the violation;

d. A statement that the responsible party in violation may appeal the imposition of the administrative penalty within twenty (20) days of the date the order is served;

e. A statement that if the responsible party fails to request an appeal of the imposition of the administrative penalty, the order imposing the penalty shall be final;

f. A statement that any responsible party upon whom a final administrative penalty has been imposed may seek review of the order imposing the penalty pursuant to California Code of Civil Procedures Sections 1094.5 and 1094.6.

2. Service of Administrative Penalty Order.

a. Persons Entitled to Service. The administrative penalty order shall be served upon the responsible party in violation. The failure of the city official issuing the order to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her.

b. If the violation is the result of a condition existing on property in the city and the city proposes to impose a lien on the property, one copy of the administrative penalty order shall also be served on each of the following if known to the city official issuing the order or disclosed from official public records: (a) the holder of any mortgage or deed of trust or other lien or encumbrance of record; and (b) the owner or holder of any lease of record. The failure of the city official issuing the order to serve any person required herein to be served shall not

invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her.

c. Method of Service. Service of an administrative penalty order may be made upon all persons entitled thereto either by personal delivery or by certified mail, return receipt requested. Service on any owner in violation is deemed complete when it is served at the address listed by the owner on the latest equalized assessment roll of Sacramento County, or as known to the city official issuing the order. In lieu of personally serving the responsible party by personal delivery or certified mail, service of the administrative penalty order and any amended or supplemental order may be made as follows:

i. In the event that service by certified return receipt mail cannot be effected or the recipient cannot be personally served, service may be made by substituted service. Substituted service may be accomplished as follows:

(A) By leaving a copy during usual business hours in the recipient's business with the person who is apparently in charge, and by thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left;

(B) By leaving a copy at the recipient's dwelling or usual place of abode, in the presence of a competent member of the household, and thereafter mailing by first-class mail a copy to the recipient at the address where the copy was left.

ii. In the event the violation results from an event occurring on, or a condition existing on, property in the city and the recipient cannot be served by certified return receipt mail or cannot be personally served and has a property manager or rental agency overseeing the premises, substituted service may be made as set forth in subsection (D)(2)(c)(i)(A) of this section upon the property manager or rental agency.

iii. If the responsible party resides or has his, her or its business address out of state and service cannot be effected by certified return receipt mail, then service may be made by first-class mail.

iv. In the event the violation relates to a condition on a property in the city, substituted service may be effected by posting the property with the administrative penalty order and mailing a copy of the order to the responsible party in violation, at the address of the property on which the violation has occurred or is occurring.

v. If the responsible party in violation or other person entitled to service cannot be located or service cannot be effected as set forth in this section, service may be made by publication in a Sacramento newspaper of general circulation which is most likely to give actual notice to the owner. Service shall be deemed sufficient when it is accomplished pursuant to Government Code Section 6063.

The failure of any person to receive such administrative penalty order shall not affect the validity of any proceedings taken under this section against any other responsible party. Service by certified mail in the manner herein provided shall be effective on the date of mailing.

3. Amount of Administrative Penalty. Unless the city council has by resolution or by ordinance adopted a separate and distinct administrative penalty for the particular violation, the amount of the administrative penalty to be imposed shall be set by the department head or his or her designee responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitutes a separate violation. Unless otherwise provided in this code, administrative penalties may be imposed in any amount not less than one hundred dollars (\$100.00) nor more than twenty-five thousand dollars (\$25,000.00) per violation. In determining the amount of the administrative penalty to be imposed, the city official shall consider factors including but not limited to the seriousness of the violation, the responsible party's efforts to correct the violation, the injury/damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, the amount of city staff time which was expended investigating or addressing the violation, and the amount of administrative penalties which have been imposed in similar situations. The amount of the administrative penalty shall be set according to the

following schedule:

a. Level A violations are violations that present a substantial probability that death or serious physical harm to the public at large or person(s) would result therefrom. Level A violations shall be subject to an administrative penalty of five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000.00);

b. Level B violations are violations that either (1) present the threat, but not substantial probability, that serious physical harm to the public at large or person(s) would result therefrom; or (2) present circumstances that are likely to cause and/or do cause serious harm to public or private property; or (3) present a conscious and willful disregard of (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level B violations shall be subject to an administrative penalty of two thousand five hundred dollars (\$2,500.00) to four thousand nine hundred ninety-nine dollars and ninety-nine cents (\$4,999.99);

c. Level C violations are violations that present circumstances that either (1) are likely to cause and/or do cause harm to public or private property; or (2) show repeated or continuous noncompliance with (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level C violations shall be subject to an administrative penalty of one thousand dollars (\$1,000.00) to two thousand four hundred ninety-nine dollars and ninety-nine cents (\$2,499.99);

d. Level D violations are violations other than Level A, B, or C violations. Level D violations shall be subject to an administrative penalty of one hundred dollars (\$100.00) to nine hundred dollars and ninety-nine cents (\$999.99).

4. Administrative Hearing Appeal.

a. Notice of Appeal. Any responsible party upon whom an administrative penalty has been imposed may appeal the administrative penalty by filing with the office of the city clerk a written notice of appeal within twenty (20) calendar days of service of the administrative penalty order. The written notice of appeal shall contain:

i. A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the penalty;

ii. A brief statement, in ordinary and concise language, of the material facts which the appellant claims support his, her or its contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted; and

iii. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by first class mail.

b. Payment of Appeal Fee. Any responsible party appealing the imposition of an administrative penalty shall be required to pay to the city clerk, at the time the written notice of appeal is filed, an appeal fee as herein provided. The appeal fee is intended to cover the costs, expenses and city employees' time incurred by the city in processing, preparation for, and hearing of the appeal, and shall be refunded to the appellant if the hearing examiner determines that imposition of the penalty is not warranted or is not in the interest of justice. No notice of appeal is valid unless accompanied by the appeal fee, unless otherwise waived pursuant to Section 1.24.100 of this code. In the event an appeal fee is waived and the violation results in a lien against the appellant's property, the appeal fee which was waived shall be added to the amount of the lien. The appeal fee shall be:

i. Level A violation, five hundred dollars (\$500.00);

ii. Level B violation, two hundred fifty dollars (\$250.00);

iii. Level C violation, one hundred dollars (\$100.00);

iv. Level D violation, fifty dollars (\$50.00).

c. **Hearing Examiner.** The administrative penalty appeal shall be heard by a hearing examiner appointed by the city council to hear administrative appeals. The hearing examiner shall not be a city employee.

d. **Setting Administrative Penalty Appeal Hearing.** The administrative penalty appeal hearing shall be set by the city clerk or his or her designee, and notice of the appeal hearing shall be sent to the appellant by first class mail at the address provided with the written notice of appeal. The hearing shall be held no sooner than twenty (20) days after the notice of appeal is filed. Notice of the appeal hearing shall be mailed to the appellant at least fifteen (15) days before the hearing date.

e. **Conduct of the Administrative Penalty Appeal Hearing.**

i. **Testimony at the Hearing.** At the time set for the administrative penalty appeal hearing the hearing examiner shall proceed to hear testimony from the representative of the city, the appellant and any other competent persons with respect to imposition of an administrative penalty.

ii. **Record of Oral Evidence at Hearing.** The proceedings at the hearing shall be reported by a tape recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.

iii. **Continuances.** The hearing examiner may, upon request of the appellant or the city, or upon his or her own motion, grant continuances from time to time for good cause shown.

iv. **Oaths—Certification.** The hearing examiner shall administer the oath or affirmation.

v. **Evidence Rules.** Government Code Section 11513, subsections (a), (b) and (c), as it exists on the effective date of the ordinance codified in this section, these provisions, or as hereafter amended, shall apply to all administrative penalty hearings.

vi. **Rights of Parties.**

(A) Parties may represent themselves, or be represented by any person of their choice.

(B) If a party does not proficiently speak or understand the English language, he or she may provide an interpreter, at that party's own cost, to translate for the party. An interpreter shall not have had any personal involvement in the issues of the case prior to the hearing.

vii. **Official Notice.** In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or county, or any of their departments.

viii. **Inspection of Premises.**

(A) In the case of a violation related to real property in the city, the hearing examiner may inspect the property prior to, during, or after the hearing, provided that:

(1) Notice of the inspection shall be given to the parties before the inspection is made;

(2) The parties consent and are given an opportunity to be present during the inspection; and

(3) Upon completion of the inspection, the hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, the material facts observed and the conclusion drawn therefrom.

(B) Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

(C) Notice to the parties, or the owner(s)' consent to inspect the property is not required if the property can be inspected from areas to which the general public has access or with permission of other persons authorized to provide access to the property and/or buildings located on the property.

(D) Subpoenas. The hearing examiner shall have the authority to issue subpoenas compelling witnesses to appear and provide testimony or subpoena duces tecum compelling witnesses to produce documents. The hearing examiner shall issue a subpoena only upon a showing of reasonable necessity by the requesting party. Failure of either party to comply with any subpoena may be considered by the hearing examiner in making his/her decision regarding the imposition of administrative penalties.

f. Imposition of the Administrative Penalty—Form and Contents of Decision—Finality of Decision.

i. Factors in Hearing Examiner's Decision. The hearing examiner may affirm the administrative penalty imposed by the city, reduce the penalty to a lower amount within the charged level of violation, reduce the level of violation and reduce the penalty to an amount within the new level of violation, or find that imposition of the penalty is not warranted or is not in the interest of justice. The hearing examiner shall have the discretion to impose a lower, but not a higher, level of violation and/or penalty amount. In making his or her decision regarding the administrative penalty, the hearing examiner shall consider evidence presented by all witnesses, the seriousness of the violation, the responsible party's efforts to correct the violation, the injury or damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, and the amount of city staff time which was expended investigating and addressing the violation.

ii. Hearing Examiner's Decision. The decision of the hearing examiner shall be issued within thirty (30) days of the hearing, shall be in writing, and shall contain findings of fact and a determination of the issues presented. The decision shall require the administrative penalty to be paid within twenty-five (25) calendar days of the date of service of the decision. The decision shall inform the responsible party that if the administrative penalty is not paid within the time specified, it may be made a personal obligation of the responsible party, and if applicable may also be made a lien against the property on which the violation occurred, and may be made a special assessment collected at the same time and in the same manner as ordinary secured property taxes are collected. The hearing examiner's decision shall also inform the responsible party that any judicial review of the hearing examiner's decision shall be pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.

iii. Service of the Hearing Examiner's Decision. Upon issuance of the decision, the city shall serve a copy on the appellant by first class mail to the address provided by appellant in the written notice of appeal. The hearing examiner's decision shall be deemed served two days after the date it is mailed to the address provided by the appellant.

iv. Any judicial action taken to set aside, annul or vacate the decision of the hearing examiner shall be filed in the manner and within the time provided in California Code of Civil Procedure Sections 1094.5 and 1094.6.

g. Payment and Collection of the Administrative Penalty.

i. Any responsible party upon whom an administrative penalty has been imposed shall pay the administrative penalty within twenty-five (25) days after service of a final order or decision of a hearing examiner. The city may take the actions set forth in this subsection to collect the unpaid penalty.

ii. Attorney's Fees and Costs. In the event a civil action is commenced to collect the administrative penalty, the city shall be entitled to recover reasonable attorney's fees and all costs associated with collection of the penalty. Costs include, but are not limited to, staff time incurred in the collection of the penalty and those costs set forth in Code of Civil Procedure Section 1033.5.

iii. Interest on Administrative Penalties. An administrative penalty shall accrue interest at the same annual rate as any civil judgment. Interest shall accrue commencing on the twenty-sixth day following service of a final order or the hearing officer's decision.

iv. Liens. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a lien on the real property on which the violation occurred.

(A) Notice shall be given to the responsible party prior to the recordation of the lien, and shall be served in

the same manner as a summons in a civil action pursuant to Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(B) The lien shall attach when the city manager or his or her designee records a lien listing delinquent unpaid administrative penalties with the county recorder's office. The lien shall specify the amount of the lien, the date of the final administrative decision, the street address, legal description, and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the record owner of the parcel.

(C) In the event that the lien is discharged, released, or satisfied, either through payment or foreclosure, notice of the discharge containing the information specified in subsection (D)(4)(g)(iv)(B) of this section shall be recorded by the city clerk.

(D) The lien may be foreclosed at any time by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys' fees and costs, including but not limited to costs incurred for processing and recording of the lien and providing notice to the property owner.

v. Special Assessments. The amount of the unpaid administrative penalty, plus interest, plus any other costs as provided in this section, may be made a special assessment against the real property on which the violation occurred. The procedure established by the city council to specially assess delinquent utility billings shall be used to specially assess unpaid administrative penalties.

vi. Other Enforcement Procedures. The city may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgments Law, California Code of Civil Procedure Sections 680.010 et seq. (Ord. 2006-065 § 3; Ord. 2005-038 § 2; Ord. 2001-046 § 2 (part); Ord. 98-038 § 1; Ord. 97-065 § 1; prior code § 1.01.070)

EXHIBIT D

**City of Sacramento
Department of Utilities**

**Policy For Determining Administrative Penalties
For Prohibited Non-Stormwater Discharges**

Section 13.16.050 of the Sacramento City Code prohibits the discharge of non-stormwater that enters the City's storm drain system. City Code section 13.16.150 authorizes various enforcement actions for violations of section 13.16.050, including the imposition of administrative penalties. Administrative penalties for violations of section 13.16.050 are imposed pursuant to the City's administrative penalty ordinance, Sacramento City Code section 1.28.010. This ordinance provides the following guidance for determining administrative penalty amounts:

Amount of Administrative Penalty. Unless the city council has by resolution or by ordinance adopted a separate and distinct administrative penalty for the particular violation, the amount of the administrative penalty to be imposed shall be set by the department head or his or her designee responsible for issuing the administrative penalty order. Each day a violation continues or occurs constitutes a separate violation. Unless otherwise provided in this code, administrative penalties may be imposed in any amount not less than one hundred dollars (\$100.00) nor more than twenty-five thousand dollars (\$25,000.00) per violation. In determining the amount of the administrative penalty to be imposed, the city official shall consider factors including but not limited to the seriousness of the violation, the responsible party's efforts to correct the violation, the injury/damage, if any, suffered by any member of the public, any instances in which the responsible party has been in violation of the same or similar code provisions in the previous three years, the amount of city staff time which was expended investigating or addressing the violation, and the amount of administrative penalties which have been imposed in similar situations. The amount of the administrative penalty shall be set according to the following schedule:

- a. Level A violations are violations that present a substantial probability that death or serious physical harm to the public at large or person(s) would result therefrom. Level A violations shall be subject to an administrative penalty of five thousand dollars (\$5,000.00) to twenty-five thousand dollars (\$25,000.00);
- b. Level B violations are violations that either (1) present the threat, but not substantial probability, that serious physical harm to the public at large or person(s) would result therefrom; or (2) present circumstances that are likely to cause and/or do cause serious harm to public or private property; or (3) present a conscious and willful disregard of (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level B violations shall be subject to an administrative penalty of two thousand five hundred dollars (\$2,500.00) to four thousand nine hundred ninety-nine dollars and ninety-nine cents (\$4,999.99);

- c. *Level C violations are violations that present circumstances that either (1) are likely to cause and/or do cause harm to public or private property; or (2) show repeated or continuous noncompliance with (i) a hearing examiner's order or orders, or (ii) orders or notices of violation issued by any agency or commission authorized to issue such orders or notices. Level C violations shall be subject to an administrative penalty of one thousand dollars (\$1,000.00) to two thousand four hundred ninety-nine dollars and ninety-nine cents (\$2,499.99);*
- d. *Level D violations are violations other than Level A, B, or C violations. Level D violations shall be subject to an administrative penalty of one hundred dollars (\$100.00) to nine hundred dollars and ninety-nine cents (\$999.99).*

Based on the above criteria, the following guidelines are established for determining administrative penalty amounts for prohibited non-stormwater discharges.

Residential/Private Citizen

Non-hazardous non-stormwater discharges

Non-hazardous materials include dirt/gravel/sand, vegetation, gray water, food waste, chlorinated pool water, detergents, etc.

First Violation:

Issuance of a notice of violation, cease and desist order and/or notice to clean and abate, but no imposition of administrative penalties, unless the City enforcement official determines that the responsible party was grossly negligent, failed to contain and clean up the prohibited material within the time frame prescribed by the City, attempted to mislead the City with incorrect information and/or refused to comply with the City's enforcement action(s).

Second Violation:

Minimum penalty of \$100, not to exceed \$999.99 (Level D). This also may be imposed for a first violation under the circumstances described above. Determination of the penalty amount within this range will be made based on consideration of the factors set forth above.

Subsequent Violations:

If the City enforcement official has imposed an administrative penalty on the same responsible party for a violation of City Code Section 13.16.050 within the preceding three years, the maximum administrative penalty for subsequent violations of City Code Section 13.16.050 may be increased to \$2,499.99. The circumstances of the subsequent violations need not be similar to those of the previous violation(s). The maximum administrative penalty for subsequent violations may be increased to \$4,999.99 if the criteria set forth above for Level B violations are met. Determination of the penalty amount within these ranges will be made based on consideration of the factors set forth above.

Multiple Days:

Each day a violation continues or occurs can be charged as a separate violation.

Hazardous non-stormwater discharges

Hazardous materials include oils, fuels, latex, oil or water based paint, stucco or concrete waste/wastewater, sewage, antifreeze, paint thinners, herbicides, pesticides, pool chemicals, cleaners, solvents, acids, etc.

First Violation:

Minimum penalty of \$200, not to exceed \$2,499.99 (Level C or D) for the first prohibited non-stormwater discharge identified as a hazardous material. Determination of the penalty amount within this range will be made based on consideration of the factors set forth above.

Subsequent Violations

If the City enforcement official has imposed an administrative penalty on the same responsible party for a prohibited hazardous non-stormwater discharge within the preceding three years, the maximum administrative penalty for subsequent prohibited hazardous non-stormwater discharges may be increased to \$4,999.99 if the criteria set forth above for Level B violations are met. The circumstances of the subsequent violations need not be similar to those of the prior violation(s). Determination of the penalty amount within this range will be made based on consideration of the factors set forth above.

Multiple Days:

Each day a violation continues or occurs can be charged as a separate violation.

Business

Non-hazardous non-stormwater discharges

First Violation:

Issuance of a notice of violation, cease and desist order and/or notice to clean and abate, but no imposition of administrative penalties, unless the City enforcement official determines that the responsible party was grossly negligent, failed to contain and clean up the prohibited material within the time frame prescribed by the City, attempted to mislead the City with incorrect information and/or refused to comply with the City's enforcement action(s).

Second Violation:

Minimum penalty of \$250, not to exceed \$2,499.99 (Level C or D). This also may be imposed for a first violation under the circumstances described above. Determination of the penalty amount within this range will be made based on consideration of the factors set forth above.

Subsequent Violations:

If the City enforcement official has imposed an administrative penalty on the same responsible party for a violation of City Code Section 13.16.050 within the preceding three years, the maximum administrative penalty for subsequent violations of City Code Section 13.16.050 may be increased to \$4,999.99 if the criteria set forth above for Level B violations are met. The circumstances of the subsequent violations need not be similar to those of the previous violation(s). Determination of the penalty amount within this range will be made based on consideration of the factors set forth above.

Multiple Days:

Each day a violation continues or occurs can be charged as a separate violation.

BMPs:

The responsible party may, upon approval by the City enforcement official, apply the administrative penalty amount toward the purchase of structural BMP's to eliminate any reasonable possibility of a future prohibited non-storm water discharge.

Hazardous non-stormwater discharges

First Violation:

Minimum penalty of \$500, not to exceed \$2,499.99 (Level C or D) for the first prohibited non-stormwater discharge identified as a hazardous material. The maximum administrative penalty may be increased to \$4,999.99 if the criteria set forth above for Level B violations are met. Determination of the penalty amount within these ranges will be made based on consideration of the factors set forth above.

Subsequent Violations

If the City enforcement official has imposed an administrative penalty on the same responsible party for a prohibited hazardous non-stormwater discharge within the preceding three years, the maximum administrative penalty for subsequent prohibited hazardous non-stormwater discharges may be increased to \$4,999.99 if the criteria set forth above for Level B violations are met. The circumstances of the subsequent violations need not be similar to those of the prior violation(s). Determination of the penalty amount within this range will be made based on consideration of the factors set forth above.

Multiple Days:

Each day a violation continues or occurs can be charged as a separate violation.

BMPs:

The responsible party may, upon approval by the City enforcement official, apply the administrative penalty amount toward the purchase of structural BMP's to eliminate any reasonable possibility of a future prohibited non-storm water discharge.

Administrative Penalties of \$5,000 or More

Administrative penalties of \$5000 or more, up to a maximum amount of \$25,000, may be imposed under circumstances meeting the criteria set forth above for Level A violations.

Other Enforcement Actions; Cost Recovery

The imposition of administrative penalties for violations of City Code Section 13.16.050 shall not prevent the City or any other authorized agency from exercising any additional enforcement authority authorized or provided in any law or regulation, including without limitation any or all of the actions authorized by City Code Section 13.16.150. The imposition of administrative penalties shall be in addition to the recovery of costs incurred by the City in cleaning up and abating a violation, or the recovery of costs granted to the City after prevailing in an administrative, civil or criminal proceeding initiated under Chapter 13.16 of the City Code.

EXHIBIT E

TITLE 15 WATER AND SEWERS*

Chapter 15.12 STORMWATER MANAGEMENT AND DISCHARGE CONTROL

Article 1 General Provisions

15.12.105 Title.

15.12.110 Findings.

15.12.120 Purpose and Intent.

15.12.130 Definitions.

15.12.135 Construction.

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15.12.190 Disclaimer of Liability.

Article 2 Prohibited Discharges

15.12.200 Prohibited Non-Stormwater Discharge.

15.12.210 Exceptions To Non-Stormwater Discharge Prohibition.

15.12.220 Exception to Otherwise Applicable Exemptions.

15.12.230 Prohibited Stormwater Discharges.

15.12.240 Prohibited Conditions.

15.12.250 Negligence or Intent Not Required.

Article 3 Reduction of Pollutants in Stormwater

15.12.300 General Requirements for Best Management Practices.

15.12.302 Significant Industrial Activities.

15.12.305 County Stormwater Permit.

15.12.310 Containment and Notification of Spills.

15.12.320 Specified Performance Requirements for Industrial Activities.

15.12.322 Construction Sites With Building Permits.

15.12.325 Post Construction Requirements for New Development and Significant Redevelopment.

15.12.327 BMP Maintenance Requirements.

15.12.330 Administrative Rules and Regulations.

Article 4 Inspection and Monitoring

15.12.400 Scope of Inspections.

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15.12.500 Enforcement at Construction Sites with Building Permits.

15.12.505 Notice of Violation.

15.12.520 Cease and Desist Orders.

15.12.525 Enforcement Actions—Content.

15.12.530 Delivery of Notice.

15.12.540 Administrative Appeals.

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15.12.548 Procedures for Collection of Administrative Civil Penalty.

15.12.549 Actions Not Prohibited.

15.12.550 Nuisance and Abatement.

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15.12.560 Administrative Civil Penalties.

15.12.570 Criminal Penalties.

15.12.580 Miscellaneous Enforcement Provisions.

Article 6 Recovery of Cost Abatement

15.12.600 Costs of Abatement—Confirmation.

15.12.610 Costs—Assessments.

15.12.620 Treble Costs.

15.12.630 Hearing of Protests.

15.12.640 Assessment for Summary Abatement.

15.12.650 Time for Contest of Assessment.

15.12.660 Filing Copy of Report With County Auditor.

Article 1 General Provisions

15.12.105 Title.

This Chapter shall be known as the "stormwater Ordinance." (SCC 1280 § 2 (part), 2004)

15.12.110 Findings.

a. The Federal Clean Water Act provides for the regulation and reduction of pollutants discharged into the Waters of the United States by extending National Pollutant Discharge Elimination System (NPDES) requirements to stormwater and urban runoff discharge into the County storm drain system.

b. The State Water Resources Control Board ("State Board") is the State water pollution control agency for all purposes of the Clean Water Act pursuant to Section 13160 of the California Water Code. The State Board is authorized by the United States Environmental Protection Agency to administer the NPDES program within the State. The Porter-Cologne Water Quality Control Act (Water Code section 13000 et seq.) provides authority for the State NPDES program, including provisions to issue NPDES Permits and Waste Discharge Requirements to regulate discharges of stormwater to waters of the State.

c. Stormwater flows from individual properties to the County storm drain system and then ultimately to the waters of the State.

d. The County is a co-permittee under the Waste Discharge Requirements for County of Sacramento and cities of Citrus Heights, Elk Grove, Folsom, Galt, and Sacramento, Storm Water Discharges from Municipal Separate Storm Sewer Systems Sacramento County (Order No. R5-2002-0206), dated December 6, 2002, which also serves as a National Pollutant Discharge Elimination System Permit under the Federal Clean Water Act (NPDES No. CAS082597). As a co-permittee, the County is required to possess the necessary legal authority, and to implement appropriate procedures, to regulate the entry of pollutants and non-stormwater discharges into and from the County storm drain system.

e. The County's Municipal Stormwater Permit requires the County effectively to prohibit non-stormwater discharges from the unincorporated urbanized area of the County into the County storm drain system except as otherwise permitted by federal law.

f. Non-stormwater discharges and stormwater pollutants that are discharged directly to waters of the State without passing through the County storm drain system are not subject to the requirements of the Municipal Stormwater Permit. However, such discharges have the potential

to degrade water quality and impact the quality of life for the people of the County. Regulation of such discharges by the County provides benefits to its people and protects the local environment. g. The Board finds in this regard that the provisions of this Chapter are necessary to provide the County with the legal authority necessary to implement and otherwise comply with the requirements of its Municipal Stormwater Permit and to protect the waters of the State for the benefit of its people and the environment. (SCC 1295 § 1, 2005; SCC 1280 § 2 (part), 2004)

15.12.120 Purpose and Intent.

a. This Chapter is adopted pursuant to Article XI, Section 7 of the California Constitution which authorizes the County to exercise its police power to protect and promote the public health, safety and general welfare. While stormwater runoff is one step in the natural cycle of water, human activities, including, but not limited to, agriculture, construction, manufacturing and the operation of an urban infrastructure, may result in undesirable discharges of pollutants and certain sediments. Such discharges may accumulate in local drainage channels and waterways and eventually may be deposited in the natural surface waters. The purpose of this Chapter is to protect and enhance the watercourses within the unincorporated area of the County, by controlling the contribution of urban pollutants to stormwater runoff which enters the County storm drain system in a manner consistent with the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act and Municipal discharge Permit No. CAS082597, and by controlling pollutants that are discharged directly to natural surface waters.

b. It is the intent of the Board in adopting this Chapter to provide the County with the legal authority to accomplish the following goals:

1. To benefit the people and environment of the County by protecting water quality in waters of the State;
2. To reduce the discharge of pollutants in stormwater to the maximum extent practicable, whether those discharges are made to the County storm drain system, or directly to natural surface waters;
3. To effectively prohibit Non-stormwater discharges into the County storm drain system or to natural surface waters;
4. To comply with the requirements of the Federal Clean Water Act, the Porter-Cologne Water Quality Control Act and NPDES Municipal Storm Water Discharge Permit #CAS082597 as they apply to the discharge of pollutants into and from the County storm drain system;
5. To fully implement the County's stormwater Quality Improvement Plan;
6. To protect the physical integrity and function of the County storm drain system from the effects of pollutants and materials other than stormwater;
7. To prevent the contamination of groundwater as a result of pollution migration from the County storm drain system;
8. To promote cost effective management and beneficial use of sediments in the County storm drain system;
9. To protect the health and safety of maintenance personnel and the public who may be exposed to pollutants in the County storm drain system or in natural surface waters;
10. To provide for the recovery of regulatory costs incurred by the County in the implementation of this Chapter or its stormwater Quality Improvement Plan, including, but not limited to, enforcement activities, compliance assistance, inspections, investigations, sampling and monitoring; and
11. To establish appropriate enforcement procedures and penalties for violations of the provisions of this Chapter. (SCC 1280 § 2 (part), 2004)

15.12.130 Definitions.

Any term(s) defined in the Federal Clean Water Act, as amended, and/or defined in the regulations for the stormwater discharge permitting program issued by the Environmental Protection Agency, as amended, and which are not specifically defined in this Chapter shall, when used in this Chapter, have the same meaning as set forth in said act or regulation. As used in this Chapter, the following words and phrases shall have the meanings set forth below unless the context clearly indicates otherwise.

- a. "Administrator" means the Administrator of the County of Sacramento's Municipal Services Agency and his or her designees.

- b. "Best management practices" or BMPs means schedules of activities, prohibition of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable the discharge of pollutants to the County storm drain system or directly or indirectly to natural surface waters. BMPs shall also be defined to include structural controls, treatment controls, source controls, training requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw materials storage.
- c. "Board" means the Board of Supervisors of the County of Sacramento.
- d. "County" means the County of Sacramento.
- e. "County stormwater permit" means a permit issued to industries by the County to establish requirements intended to eliminate Non-stormwater discharges and control, reduce, or eliminate pollutants in stormwater.
- f. "County storm drain system" means those public man-made facilities within the unincorporated area of the County which are owned, operated, maintained or controlled by the County by which stormwater may be conveyed to natural surface waters, including, but not limited to, any roads with drainage systems, municipal streets, catch basins, water quality basins, detention basins, constructed wetlands, artificial channels, aqueducts, curbs, gutters, ditches, sumps, pumping stations, storm drain inlets, and storm drains.
- g. "Director of Water Resources" means the Director of the County's Department of Water Resources, and his or her designees.
- h. "Discharge" means the release or placement of any material into the County storm drain system or natural surface waters, including, but not limited to, stormwater, wastewater, pollutants, solid materials, liquids, hazardous waste, raw materials, debris, litter or any other substance.
- i. "Discharger" means any person who discharges, or causes to discharge, either directly or indirectly, stormwater or any other material into the County storm drain system or to natural surface waters.
- j. "Illicit connection" means any physical connection to the County storm drain system or natural surface waters which is not expressly authorized by the County.
- k. "Implementing agency" means the agency or department designated by the Administrator to enforce the provisions of this Chapter with respect to a particular site, facility or industry category.
- l. "Industry" or "industrial activity" means any service, business, enterprise, or any other activity conducted by any person for the purpose of monetary or other compensation, or in support of or promotion of such activity. This term shall also mean any similar activity conducted by a non-profit corporation as defined by the State of California.
- m. "Material" means any substance, including, but not limited to, raw materials, finished products, garbage and debris, lawn clippings, leaves and other vegetation, biological and fecal waste, sediment and sludge, oil and grease, gasoline, paints, solvents, cleaners and any fluid or solid containing chemicals.
- n. "Municipal Stormwater Permit" means NPDES Permit #CAS082597, including any amendments thereto or successor permit, issued by the Regional Board to the County and the cities of Citrus Heights, Elk Grove, Folsom, Galt, Rancho Cordova, and Sacramento.
- o. "National Pollution Discharge Elimination System Permit" or "NPDES Permit" means a permit issued by either the Regional Board, the State Water Resources Control Board pursuant to Chapter 5.5 (commencing with Section 13370) of Division 7 of the Water Code, or the United States Environmental Protection Agency to control discharges from point sources to natural surface waters.
- p. "Natural surface water" means creeks, natural ponds or lakes, wetlands, the Sacramento River, American River, Cosumnes River, Mokelumne River, Lake Natoma, or navigable waters of the delta and shall include any waters of the United States contained within the boundaries of the State. Natural surface water does not mean any wet or dry detention basin, constructed wetland, stormwater treatment facility, artificial lake or pond or other man-made body of water.
- q. "Non-stormwater discharge" means any discharge to the County storm drain system or directly to natural surface waters which did not originate as surface runoff and drainage from storm events and snow melt, but essentially resulted from human activities, or materials or processes under a persons control. Non-stormwater discharges include but are not limited to discharges of: (1) water that has been used by a person for any purpose such as cleaning, rinsing, cooling, irrigation, aquaculture, recreation, cooking, and industrial processes; (2) water or wastewater that originates or flows from equipment, valves, piping, hoses, containers, tanks, or other man-made apparatus; or (3) any discharge of materials or wastes other than water.
- r. "Person" means any natural person as well as any corporation, partnership, public agency,

trust, estate, cooperative association, joint venture, business entity or other similar entity, or the agent, employee or representative of any of the above.

s. "Pollutant" means any contaminant or other substance which, as determined by the Administrator, is discharged or has a reasonable potential to be discharged in sufficient quantities or concentrations to cause exceedance of receiving water limitations, or otherwise cause a violation of the Municipal Stormwater Permit. Pollutant may include, but is not limited to, solid waste, sewage, garbage, medical waste, wrecked or discarded equipment, radioactive material, dredged soil, rock, sand, industrial waste, feces, fecal coliform, fecal streptococcus, enterococcus, volatile organic carbon, surfactants, oil and grease, petroleum hydrocarbon, organic solvents, metals, phenols, pesticides, nutrients, suspended or settleable solids, materials causing an increase in biochemical or chemical oxygen or total organic carbon, substances which alter pH, and those pollutants defined in Section 1362(6) of the Federal Clean Water Act.

t. "Potential discharger" means any person who by nature of the enterprise, activity or industry in which such person is engaged, or by the use, possession or ownership of specified types of building, facility, equipment, or materials, is determined by the Administrator to generate or have the capacity to generate pollutants, wastes, or wastewater which have significant potential to be discharged to the County storm drain system or directly to any natural surface waters.

u. "Premises" means any building, lot, parcel or land, or portion thereof, whether improved or unimproved.

v. "Prohibited non-stormwater discharge" means any non-stormwater discharge to the County storm drain system or directly to natural surface waters, which is not otherwise specifically authorized by this Chapter, the Regional Board, State or Federal law, or an NPDES Permit.

w. "Prohibited non-stormwater discharge installation" means any structure or equipment installed at a person's premises that is not directly connected to the County drain system, but nonetheless is intended or serves to discharge or convey a prohibited non-stormwater discharge to the County storm drain system or waters of the State.

x. "Receiving water limitations" is as defined and listed in Section B.1. of the Municipal Stormwater Permit or any successor document.

y. "Receiving waters" means surface bodies of water, as defined by the Municipal Stormwater Permit, including, but not limited to, creeks and rivers, which serve as discharge points for the County storm drain system.

z. "Regional Board" means the California Regional Water Quality Control Board, Central Valley Region.

aa. "Significant industrial activity" means any industrial activity, individual industrial facility, or class of industrial facilities which is determined by the Administrator to discharge or have the potential to discharge pollutants into stormwater, or non-stormwater in quantities or concentrations which may cause exceedance of receiving water limitations, or for which a requirement has been imposed by the state or federal government on the County to conduct stormwater regulatory activities focused on the facility or activity.

bb. "Significant redevelopment" means the creation or addition of at least five thousand (5,000) square feet of impervious surfaces on an already developed site. Significant redevelopment includes, but is not limited to expansion of a building footprint, or replacement of a structure; replacement of impervious surface that is not part of a routine maintenance activity; and land-disturbing activities related to structural or impervious surfaces.

cc. "Specified performance requirements" means standards adopted by the County that define required conditions or results regarding the elimination of non-stormwater discharges or the control of pollutants in stormwater from specified sources.

dd. "State Construction General Permit" means the State Water Resources Control Board's Order No. 99-08 – DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Waste Discharge Requirements (WDRS) for discharges of Storm Water Runoff Associated With Construction Activity, and any successor documents.

ee. "State Industrial General Permit" means the State Water Resources Control Board's "Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated With Industrial Activities Excluding Construction Activities" and any successor documents.

ff. "Stormwater" means surface runoff and drainage resulting from storm events and snow melt, including surface runoff and drainage that contains pollutants as a result of contact with man-made or natural sources.

gg. "Threatened prohibited non-stormwater discharge" means any condition or activity which does not currently result in a prohibited non-stormwater discharge but is nevertheless determined by the Administrator to be a condition which results in a substantial likelihood of a future

prohibited non-stormwater discharge;

hh. "Unmitigated stormwater pollutant source" means any existing condition that if left unmitigated is reasonably likely, as determined by the Administrator, to result in a discharge of pollutants in stormwater that will cause or contribute to an exceedance of receiving water limitations, harm or interfere with the County storm drain system, or otherwise pose a threat to public health and safety.

ii. "Waters of the United States" has the same meaning as set forth in Part 122.2 of Title 40 of the Code of Federal Regulations or any successor provision. (SCC 1295 § 2, 2005; SCC 1280 § 2 (part), 2004)

15.12.135 Construction.

The provisions of this Chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and any acts amendatory thereof or supplementary thereto, applicable implementing regulations, and NPDES Permit # CAS082597 and any amendment, revision or re-issuance thereof. In the event of a conflict between this Chapter and any federal or state law, regulation, order or permit, the requirement which establishes the higher standard for public health and safety shall govern. (SCC 1280 § 2 (part), 2004)

15.12.140 Applicability.

The provisions of this Chapter shall be applicable to all dischargers and potential dischargers located within the unincorporated area of the County and all dischargers or potential dischargers that discharge either directly or indirectly into the County storm drain system. This Chapter shall also apply, within the unincorporated area of the County, to stormwater and Non-stormwater discharges made directly to natural surface waters. This Chapter shall not be applicable to discharges occurring outside the unincorporated area of the County.

This Chapter shall apply to facilities subject to the State Construction General Permit; the pollutant control provisions of the County Erosion and Sediment Control Ordinance, County Grading permit, or a Building Permit; or any other instrument of the County that establishes pollutant control provisions for construction sites. However, compliance with the requirements of these permits and the Erosion and Sediment Control Ordinance shall constitute compliance with this Chapter.

This Chapter shall not apply to activities conducted by or facilities operated by the State of California or by agencies of the Federal Government. (SCC 1280 § 2 (part), 2004)

15.12.150 Regulatory Consistency.

The provisions of this Chapter shall take precedence over and are controlling with respect to any conflicting or inconsistent provisions in this Code. (SCC 1280 § 2 (part), 2004)

15.12.160 Compliance Disclaimer.

Compliance by any person with the provisions of this Chapter shall not preclude the need to comply with other local, state or federal statutory or regulatory requirements relating to the control of pollutant discharges or protection of stormwater quality, or both. (SCC 1280 § 2 (part), 2004)

15.12.170 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter. The Board hereby declares that it would have adopted this Chapter and each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof without regard to whether any other section,

subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter would subsequently be declared to be invalid or unconstitutional. (SCC 1280 § 2 (part), 2004)

15.12.180 Administration.

Except as otherwise provided herein, the authority to implement this Chapter is vested in the Administrator who shall be responsible for the administration, implementation and enforcement of the provisions of this Chapter. Unless otherwise specified herein, any powers granted to or duties imposed upon the Administrator may be delegated by the Administrator to other County employees or, upon the approval of the Board, to employees of other public agencies. (SCC 1280 § 2 (part), 2004)

15.12.190 Disclaimer of Liability.

The degree of protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific, engineering and other relevant technical considerations. The standards set forth herein are minimum standards and this Chapter does not imply that compliance will ensure that there will be no unauthorized discharge of pollutants into natural surface waters. This Chapter shall not create liability on the part of the County or any officer or employee thereof for any damages that result from reliance on this Chapter or any administrative decision lawfully made there under. (SCC 1280 § 2 (part), 2004)

Article 2 Prohibited Discharges

15.12.200 Prohibited Non-Stormwater Discharge.

Except as provided in Section 15.12.210, it shall be unlawful for any person to make or cause to be made any Non-stormwater discharge into the County storm drain system or directly to natural surface waters. (SCC 1280 § 2 (part), 2004)

15.12.210 Exceptions To Non-Stormwater Discharge Prohibition.

The following discharges to the County storm drain system are exempt from the otherwise applicable discharge prohibition set forth in Section 15.12.200:

a. Any discharge regulated under a NPDES Permit issued to the discharger, and administered by the State pursuant to Chapter 5.5 of Division 7 of the Water Code, provided that any such discharge is in compliance with all requirements of the NPDES Permit and all other applicable laws and regulations.

b. Any discharge from any of the following activities provided that any such discharge does not cause or contribute to the violation of any receiving water limitation as determined by the Administrator:

1. Water line flushing;
2. Landscape irrigation;
3. Diverted stream flows;
4. Rising ground waters;
5. Uncontaminated ground water infiltration [as defined in 40 CFR 35.2005(20)] to separate storm sewers;
6. Uncontaminated pumped ground water;
7. discharges from potable water sources;
8. Foundation drains;
9. Air conditioning condensate;
10. Uncontaminated irrigation water;
11. Springs;
12. Water from crawl space pumps;
13. Footing drains;
14. Lawn watering;

15. Individual residential car washing;
 16. Flows from riparian habitats and wetlands;
 17. Dechlorinated swimming pool discharges; or
 18. discharges or flows from emergency fire fighting activities.
- c. Any discharges which the Administrator, the County Health Officer or the Regional Board determines in writing are necessary for the protection of public health or safety.
- d. Additional categories of non-stormwater discharges which do not cause or contribute to the violation of any receiving water limitation may be excepted from the otherwise applicable prohibition by the Administrator upon approval of the Executive Officer of the Regional Board, as provided in the Municipal Stormwater Permit, or any successor permit. (SCC 1280 § 2 (part), 2004)

15.12.220 Exception to Otherwise Applicable Exemptions.

Notwithstanding the exemptions provided for in Section 15.12.210 above, if the Regional Board or the Administrator determines that a discharge which is otherwise exempt from the prohibition on discharges causes or significantly contributes to the violation of any receiving water limitation or results in the conveyance of significant quantities of pollutants to natural surface waters, or is otherwise a danger to public health or safety, the Administrator may give written notice to the owner or operator of the facility that the discharge exception shall not apply to the discharge at issue following expiration of the thirty (30) day period commencing upon delivery of the notice. Upon expiration of such thirty (30) day period, any such discharge shall be unlawful. Upon finding that any continuance of the discharge poses an immediate significant threat to the environment or to public health and safety, the Administrator may waive the thirty day waiting period and require immediate cessation of the discharge. (SCC 1280 § 2 (part), 2004)

15.12.230 Prohibited Stormwater Discharges.

It shall be unlawful for any person to discharge, or cause to be discharged, any stormwater or material to the County storm drain system which results in, or contributes to a violation of a receiving water limitation or a violation of the Municipal Stormwater Permit. (SCC 1280 § 2 (part), 2004)

15.12.240 Prohibited Conditions.

- a. In the interest of preventing prohibited discharges from occurring, it shall be unlawful for any person to maintain, or cause to be maintained, any of the following conditions:
1. Unmitigated stormwater pollution source;
 2. Threatened prohibited non-stormwater discharge;
 3. Prohibited non-stormwater discharge installation; or
 4. Illicit connection.
- b. Illicit connections shall be subject to removal and abatement by the County pursuant to this Chapter and Title 16 of this Code.
- c. The prohibition set forth in subsection (a)(4) above shall apply to illicit connections in existence at the time that this Chapter becomes effective. Upon the effective date of this Chapter, any person who maintains an illicit connection shall have thirty (30) days from the effective date of this Chapter to disconnect and discontinue use of such connection. Notwithstanding the provisions of this section, any person who maintains an illicit connection, as defined in Section 15.12.130, may apply to the County for a Sacramento County Water Agency Permit to continue the connection subject to applicable County standards. No permit shall be issued for any connection or any physical facility or apparatus that is installed, intended, serves, or is known to convey a prohibited discharge to the County storm drain system or waters of the State. (SCC 1295 § 3, 2005; SCC 1280 § 2 (part), 2004)

15.12.250 Negligence or Intent Not Required.

A violation of the provisions of this Article shall occur irrespective of the negligence or intent of

the violator to construct, maintain, operate or utilize an illicit connection or to cause, allow or facilitate any prohibited discharge. (SCC 1280 § 2 (part), 2004)

Article 3 Reduction of Pollutants in Stormwater

15.12.300 General Requirements for Best Management Practices.

Any person engaged in activities which may result in pollutants entering the stormwater conveyance system shall, to the maximum extent practicable, undertake BMPs to reduce the risk of Non-stormwater discharge and/or pollutant discharge. (SCC 1280 § 2 (part), 2004)

15.12.302 Significant Industrial Activities.

- a. The Administrator may designate as significant industrial activities those industrial activities or facilities which are identified as potentially significant sources of discharges of pollutants to the County storm drain system. A significant industrial activity may occur at stationary facilities or as a mobile activity that takes place at various job sites.
- b. Industries for which the Municipal Stormwater Permit specifies that the County shall conduct routine inspections, or which are listed in Municipal Stormwater Permit provision 9 ii c, are hereby designated as significant industrial activities.
- c. Notwithstanding subsection (b) of this section, food establishments, as defined in the Section 113780 of the State of California Health and Safety Code, shall not be designated as significant industrial activities.
- d. Significant industrial activity designations that apply only to individual facilities may be made by the Administrator and are subject to appeal under section 15.12.540 of this Chapter.
- e. Significant industrial activity designations made by the Administrator pursuant to subsection (a) of this section that apply to classes of activities or facilities shall be subject to the requirements of Section 15.12.330 of this Chapter governing the adoption of regulations. (SCC 1295 § 4, 2005; SCC 1280 § 2 (part), 2004)

15.12.305 County Stormwater Permit.

- a. The Administrator may require the owner or operator of a significant industrial activity to obtain a County stormwater permit, which may establish any provisions necessary for the implementation of this Chapter, effective control of stormwater pollutants and non-stormwater discharges, and compliance with the Municipal Stormwater Permit. Provisions may include but are not limited to applicable specified performance requirements; and reporting, documentation, training, and monitoring requirements.
- b. Notwithstanding subsection (a) of this Section, food establishments, as defined in the State of California Health and Safety Code Section 113780, and industrial facilities required to obtain coverage under the State Industrial General Permit shall not be required to obtain a County stormwater permit.
- c. The County stormwater permit shall describe the aspects of business to which it applies, which may include but are not limited to areas, equipment, buildings, industrial processes, or activities of the business.
- d. Any person who continues to own or operate a significant industrial activity without obtaining a County stormwater permit if required by the Administrator, shall be in violation of this Chapter.
- e. The Administrator may establish permit fees, according to the provisions of Section 15.12.450 of this Chapter, to fund the County's costs associated with regulating the permitted activity, including but not limited to administration, inspection, enforcement, compliance assistance, and outreach.
- f. The Administrator may revoke a County stormwater permit for significant violations of this Chapter. Prior to issuance or revocation of any permit, the Administrator shall establish, as part of the enforcement policy required by Section 15.12.555, written policy regarding permit administration, including timelines and criteria for permit revocation and permit reinstatement. Permit revocation and reinstatement decisions by the Administrator shall be subject to appeal under Section 15.12.540 of this Chapter. (SCC 1280 § 2 (part), 2004)

15.12.310 Containment and Notification of Spills.

- a. Any person owning or occupying a premises, or conducting any activity, that has knowledge of any non-stormwater discharge or threatened prohibited discharge, from the premises or activity to the County stormwater conveyance system shall immediately take all reasonable action to contain and otherwise minimize any such discharge.
- b. The Administrator may designate individual facilities or types of industries where the owner or operator of the industry shall be required to notify the Administrator or the implementing agency within twenty-four (24) hours of the discovery of an actual discharge into the County stormwater conveyance system.
- c. For any discharge subject to the reporting requirements of the State of California Water Code sections 13271 and 13272, notification in compliance therewith shall constitute sufficient notification for the purposes of this Section. (SCC 1295 § 5, 2005; SCC 1280 § 2 (part), 2004)

15.12.320 Specified Performance Requirements for Industrial Activities.

- a. The Administrator may establish specified performance requirements for significant industrial activities that are intended to apply to a class or classes of industries. Such requirements shall be subject to the provisions for adoption of regulations under Section 15.12.330 of this Chapter.
- b. The Administrator may impose specified performance requirements that apply to single facilities. Such requirements shall be subject to appeal under Section 15.12.540 of this Chapter.
- c. Any facility that it is in compliance with its State or Federal NPDES Permit for stormwater discharges for that facility shall be deemed to have met the requirements of Section 15.12.300, except that any specified performance requirements applicable to such facilities shall also be met. (SCC 1280 § 2 (part), 2004)

15.12.322 Construction Sites With Building Permits.

Any person owning or operating a construction site for which a building permit has been issued shall implement BMPs to control the discharge of pollutants to the maximum extent practicable, and eliminate non-stormwater discharges that are not in compliance with an NPDES Permit. (SCC 1280 § 2 (part), 2004)

15.12.325 Post Construction Requirements for New Development and Significant Redevelopment.

- a. The Administrator shall be authorized to establish specified performance requirements and requirements for BMPs as appropriate to minimize the long-term, post construction discharge of stormwater pollutants from new development or significant redevelopment, to implement the development standards plan, and to comply with the requirements associated with development standards in the Municipal Stormwater Permit, including but not limited to Provisions 16 through 26. The requirements for new development or redevelopment may include but are not limited to performance standards, source control BMPs, treatment BMPs, structural BMPs, operational BMPs, building material specifications or limitations, site design requirements, signage and marking, and associated maintenance programs or schedules.
- b. Requirements established pursuant to subsection (a) of this section may be included in development standards, building codes, building permits, conditions of development, or any other appropriate instrument administered by the County. (SCC 1280 § 2 (part), 2004)

15.12.327 BMP Maintenance Requirements.

The Administrator may require a property owner to establish, document, and conduct a maintenance program, subject to approval, for any BMP or to ensure continued compliance with specified performance requirements. This requirement may apply to BMPs required by the County or BMPs that were voluntarily installed. Such a maintenance program may be required when the Administrator determines that proper maintenance is necessary to protect public safety,

health, infrastructure, or the environment, or to otherwise meet the purposes of this Chapter. Maintenance requirements established pursuant to this subsection must be appropriate for the site conditions and design of BMPs. (SCC 1295 § 6, 2005; SCC 1280 § 2 (part), 2004)

15.12.330 Administrative Rules and Regulations.

- a. The Administrator shall have the authority to promulgate regulations for the implementation of this Chapter. Prior to the Administrator's initiation of any proposed regulations, the Administrator shall submit a public input plan to the Board for its approval. The public input plan approved by the Board shall be generally applicable to the promulgation of regulations by the Administrator.
- b. All regulations promulgated by the Administrator shall be consistent with the provisions of this Chapter. Any such regulations, or amendments thereof, shall be filed with the Clerk of the Board. The Clerk shall cause announcement of said rules or regulations to be published in a newspaper of general circulation within ten calendar days. Such announcements shall provide a reasonable summary of the content of the rule. In addition, the Administrator shall make a reasonable effort to identify, notify, and provide copies to any industries which are specifically designated by the Administrator as subject to a rule or regulation. However, neither the failure of the Administrator to provide such notice nor the failure to receive individual notice shall exempt an industry from that rule or regulation. No regulations promulgated by the Administrator or amendments thereof, shall be enforced or become effective until thirty (30) calendar days following the date on which notification of the regulations are published.
- c. Any person who asserts that he or she is aggrieved by the terms or application of a regulation issued pursuant to this section may appeal the issuance of such regulation by filing a written notice of appeal with the Clerk of the Board. The notice of appeal shall specifically identify the regulation or regulations from which the appeal is taken and the reasons for the appeal. Upon receipt of such notice, the Clerk of the Board shall schedule the appeal for a public hearing by the Board. At the conclusion of the public hearing the Board shall be vested with jurisdiction to deny the appeal or to rescind or modify the regulation. The Board's determination in this regard shall be final.
- d. Any regulation from which an appeal is filed prior to its effective date shall not become effective until the date of a determination by the Board of the appeal. Any regulation from which an appeal is filed on or subsequent to the effective date thereof shall remain in full force and effect during the pendency of the appeal, and any decision which rescinds or modifies the regulation shall apply prospectively. (SCC 1280 § 2 (part), 2004)

Article 4 Inspection and Monitoring

15.12.400 Scope of Inspections.

- a. Prior to commencing any inspection authorized pursuant to this Chapter, the Administrator shall obtain the consent of the owner or occupant of the premises, an inspection warrant or a criminal search warrant.
- b. The Administrator may conduct inspections related to purposes of implementing this Chapter on private or public property. Inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this Chapter, including, but not limited to, compliance with requirements of the Municipal Stormwater Permit, visual evidence, complaints received, knowledge or physical evidence of industrial activities or other pollutant sources, random sampling, sampling in areas with evidence of stormwater contamination, illicit connections, discharge of non-stormwater to the County storm drain system or similar factors.
- c. The Administrator may enter upon private property to investigate the source of any discharge to any public street, inlet, gutter, storm drain or the County storm drain system.
- d. The Administrator may enter upon private property for the purpose of verifying compliance with the provisions of this Chapter, including, but not limited to, the following:
 1. Identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property;
 2. Identifying point(s) of discharge of all wastewater, process water systems, pollutants and other discharges from the property;
 3. Investigating the drainage patterns of the premises, including natural and graded slopes, and

artificial conveyance systems;

4. Establishing the location of all points of discharge from the property, whether by surface run-off or through a storm drain system;

5. Locating any prohibited condition, illicit connection, or the source of any prohibited discharge; and

6. Evaluating implementation of BMPs.

e. For purposes of verifying compliance with the provisions of this Chapter, the Administrator may inspect any vehicle, truck, trailer, tank truck or other mobile equipment, or any stationary equipment, which may reasonably be believed to be used by the business for business-related activities and to be associated with industrial sources of pollutants or with non-stormwater discharges.

f. The Administrator may inspect and copy all records of the owner or occupant of any premises relating to chemicals or processes presently or previously occurring on-site, including materials and/or chemical inventories, facilities maps or schematics or diagrams, material safety data sheets, hazardous waste manifests, business plans, pollution prevention plans, state general permits, monitoring program plans or any other records relating to illicit connections, prohibited discharges or the potential discharge of pollutants to the County storm drain system. In addition, the Administrator may require the owner or occupant to furnish, within a reasonable time period, copies of all such records.

g. The Administrator may inspect, sample and test any area runoff, soils area (including any groundwater testing), process discharge, materials within any waste storage area (including any container contents), and/or treatment system discharge for the purpose of determining the potential for the contribution of pollutants to the County storm drain system. The Administrator may investigate the integrity and layout of all storm drain and sanitary sewer systems or other pipelines on the premises using appropriate tests, including, but not limited to, smoke and dye tests or video surveys. The Administrator may take photographs or video tape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the premises.

h. The Administrator may erect and maintain monitoring and sampling devices for the purpose of measuring any discharge or potential source of discharge to the County storm drain system. (SCC 1295 § 7, 2005; SCC 1280 § 2 (part), 2004)

15.12.430 Monitoring Requirements for Industrial Facilities.

a. The Administrator may require industries, at their own expense, to conduct and report monitoring of stormwater and non-stormwater discharges from their facilities and operations, for purposes necessary for the implementation of this Chapter or compliance with the Municipal Stormwater Permit. The goals of monitoring may include but are not limited to characterization of known and potential pollutant sources, pollutant content of discharges, and BMP effectiveness. Required forms of monitoring may include but are not limited to toxicity, flow, and analysis of pollutant concentrations.

b. The Administrator may designate specific monitoring requirements and/or require the discharger or potential discharger to submit a monitoring plan that describes specific monitoring requirements. Specific monitoring requirements may include sampling points, sampling times or deadlines, analysis and sampling methods, frequencies, storm event criteria, and other specifications necessary to ensure timely, adequate, accurate, and representative monitoring;

c. The discharger or potential discharger shall ensure that the integrity of the sample is protected at all times, including collection, handling, splitting, transport, and storage. Deliberate tampering with or altering of a sample shall be a violation of this Chapter.

d. The Administrator may specify information that must be documented in association with any sampling and monitoring event. At a minimum, unless otherwise allowed by the Administrator, the discharger or potential discharger shall record and maintain the following information for each sampling event:

1. The date, exact place, method and time of sampling;
2. The name, title, and employer of the person or persons taking the samples;
3. Sample preservation used;
4. The dates analyses were performed;
5. Sample chain of custody forms;
6. Who performed the analyses;
7. Analytical methods used, including detection limits;

- 8. Quality assurance and quality control documentation;
 - 9. Laboratory reports of analytical results;
 - 10. Any unusual observations or conditions noted during sample acquisition or analysis.
- e. Any information submitted pursuant to this section shall be subject to the approval of the Administrator and the Administrator may require additional information if the Administrator determines the information submitted is incomplete or insufficient. (SCC 1280 § 2 (part), 2004)

15.12.435 Reporting Requirements.

- a. The Administrator may require any person to report information for purposes related to the purpose and intent of this Chapter. Required information may include but is not limited to the following: characterization of industrial activities; compliance with this Chapter, compliance with a County stormwater permit; compliance with State General Permit requirements; compliance with the County stormwater Ordinance; compliance with administrative enforcement orders or other enforcement actions; discharge monitoring; training; and BMP implementation, effectiveness, and maintenance.
- b. The Administrator may require information to be submitted on an as needed basis, or according to a specific schedule as specified in a County stormwater permit.
- c. The Administrator may require submitted information to be compiled, summarized, analyzed or organized in a reasonable manner that facilitates its interpretation or other use. As necessary to facilitate the use of information, the Administrator may also specify the medium and format of required submittals.
- d. Failure to provide information in a timely manner as required by the Administrator, or knowingly or negligently concealing, destroying, or providing false information shall be a violation of this Chapter. (SCC 1295 § 8, 2005; SCC 1280 § 2 (part), 2004)

15.12.438 Confidentiality of Information.

- a. Information and data on a discharger or potential discharger obtained from inspections, reports, questionnaires, applications, permits, monitoring programs, records, or any other form of submittal to the County shall be available to the public or other governmental agency without notification unless the discharger or potential discharger specifically requests confidentiality as to any portion thereof and is able to demonstrate to the satisfaction of the Administrator that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the discharger or potential discharger. Stormwater and non-stormwater discharge constituents and characteristics will not be recognized as confidential information, and effluent data shall be available to the public without restriction.
- b. When requested by a discharger or potential discharger furnishing information to the County, and agreed to by the Administrator, the portions of that information which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available to the County and other governmental agencies for uses related to the ordinance codified in this Chapter, the National Pollutant Discharge Elimination System (NPDES) and/or the pretreatment program, and enforcement of other environmental regulatory programs. Those portions of the information shall also be available for use by the state or any state agency in judicial review or enforcement proceedings involving the discharger or potential discharger furnishing the information.
- c. Information and data requested from a discharger or potential discharger which the discharger or potential discharger believes to be proprietary and the release of which to the public would substantially impair the operations or business interests of the discharger or potential discharger, may alternatively be provided to the County for its review at the facility of the discharger or potential discharger rather than provided to the County for its keeping, at the discretion of the County. The burden will be on the discharger or potential discharger to demonstrate to the satisfaction of the County that such information is proprietary and that this alternative procedure is necessary or appropriate and will not prevent the County from properly carrying out the objectives of this Chapter.
- d. In the event access to or disclosure of any such confidential or proprietary information is requested pursuant to an action brought under federal or state laws, the County shall have the option, in its sole discretion, of defending itself in such action or requiring the discharger or potential discharger to provide a defense. If the County makes written tender upon a discharger

or potential discharger to defend such an action with counsel acceptable to County and such discharger or potential discharger does not appear in and assume the defense of such action within the time specified in the tender, the County shall be free to disclose the information to the party making request therefore. In any event, the discharger or potential discharger shall be liable to the County in defending such action and for any judgment rendered against the County in such action. Payment of all such amounts shall be made by the discharger or potential discharger within thirty (30) days of billing by the County. (SCC 1295 § 9, 2005; SCC 1280 § 2 (part), 2004)

15.12.440 Record Retention.

Any reports, data, or other records and documentation required by the Administrator of a discharger to be collected or submitted for characterizing discharges, demonstrating compliance with this Chapter, or otherwise related to the purposes of this Chapter, shall be retained at the discharger's premises and made readily available to the Administrator for a period of not less than three years. (SCC 1295 § 10, 2005)

15.12.450 Fees.

The Administrator shall collect such fees as may be established by the Board to provide for the recovery of regulatory costs, including routine inspections and other regulatory functions associated with this Chapter. Any such fees shall be established by resolution of the Board. Failure to pay required fees within the time period set in policy established by the Administrator shall be a violation of this Chapter. There shall be no fee assessed to appeal the determination that a person conducts any significant industrial activity. (SCC 1280 § 2 (part), 2004)

Article 5 Enforcement

15.12.500 Enforcement at Construction Sites with Building Permits.

Any person found to be in violation of any provision of this Chapter in connection with activities subject to a building permit issued pursuant to Title 16 of the Sacramento County Code, shall be subject to the enforcement provisions of both this Chapter and Title 16. (SCC 1295 § 11, 2005; SCC 1280 § 2 (part), 2004)

15.12.505 Notice of Violation.

The Administrator may issue a notice of violation to any person found to be in violation of a provision of this Chapter, including any regulation, permit, information request, order, variance, or other requirement that the Administrator is authorized to enforce or implement pursuant to this Chapter. (SCC 1280 § 2 (part), 2004)

15.12.520 Cease and Desist Orders.

- a. Any violation of this Chapter in which the Administrator also determines that the violation constitutes an immediate threat to public health or safety, including by way of illustration and not limitation, significant harm to human or aquatic life or to the County storm drain system or natural surface waters, may result in an order to immediately cease and desist all activities causing such immediate threat.
- b. A cease and desist order shall direct the owner or occupant of any premises subject to this Chapter, or any person named therein which is subject to this Chapter, to immediately discontinue all or specified prohibited conditions or discharges to the County storm drain system, natural surface waters, or otherwise, until such time as abatement actions sufficient in the determination of the Administrator have been satisfactorily effected and so confirmed by written amendment to said cease and desist order.
- c. Any cease and desist order may be appealed pursuant to the administrative appeals process

of this Chapter; provided, however, the effect of the cease and desist order shall remain in effect pending final determination thereof. Nothing shall limit the Administrator's authority to continue enforcement actions under a pending cease and desist order, including modifying a cease and desist order consistent with the purpose and intent of this Chapter.

d. Any cease and desist order shall be cumulative with all of the remedies in this Chapter and as provided by law.

e. A cease and desist order shall inform the discharger of the Administrator's authority and intent to conduct abatement of the violation or threatened violation according to Section 15.12.550, if the discharger fails to comply with the requirements of the order within the specified time frame.

f. If the discharger fails to comply with a cease and desist order within the time specified in the order, the Administrator may conduct abatement of the violation according to Section 15.12.550.

g. Nothing in this section requires the Administrator to issue a cease and desist order before conducting summary abatement as provided under Section 15.12.550. (SCC 1295 § 12, 2005; SCC 1280 § 2 (part), 2004)

15.12.525 Enforcement Actions—Content.

a. In addition to any other content, a notice of violation, or a cease and desist order shall contain the following elements:

1. A statement of the Administrator's findings that indicates a violation has occurred.
2. A citation of the provision of this Chapter that has been violated.
3. A date by which any person must be in compliance with this Chapter, or a date by which an action plan must be submitted by the person to propose a means and time frame by which to correct violations. The Administrator may extend the compliance date when good cause exists for such an extension.
4. Notification that continued non-compliance may result in additional enforcement action being taken against the business, facility, or any responsible persons.
5. Notification that the County may recover any costs incurred by the County as a result of the violation.
6. Notification that a violation of this Chapter may result in an administrative civil penalty of up to five thousand dollars (\$5,000.00) per violation for each day that the violation occurs, or in criminal penalties.
7. Notification that the recipient has a right to a hearing on the matter as set forth in Section 15.12.540 of this Chapter, to determine the enforcement of any administrative civil penalty sought by the Administrator, or to appeal any findings or required corrective actions established by the Administrator.
8. Notification of hearing dates, appeal deadlines, and procedures for requesting a hearing established according to Section 15.12.540 of this Chapter.

b. In addition to any other content, a notice of violation, or a cease and desist order, or a notice of administrative civil penalty may establish required corrective actions, including the following:

1. Terms, conditions, and requirements reasonably related to the provisions of this Chapter, including the following:
 - A. Cessation of illicit discharges.
 - B. Correction of prohibited conditions.
 - C. A requirement for submittal of a written action plan for achieving and maintaining compliance with this Chapter. The Administrator may require the action plan to address specific items, including the following:
 - i. Specific time schedules for compliance;
 - ii. Description of BMPs that will be implemented for containment, cleanup, removal, storage, or proper disposal of any material having the potential to contribute pollutants to stormwater runoff;
 - iii. Identification of persons responsible for compliance with this Chapter.
 - D. Reporting requirements to demonstrate ongoing compliance.
2. A requirement that the person receiving same shall submit written certification to the Administrator that the necessary corrective actions have been completed. As appropriate for the type of correction action taken, the notice of violation may require documentation that substantiates the certification, including but not limited to receipts, contracts, or photographs.
3. Any other terms or conditions reasonably calculated to prevent additional or on-going violations of this Chapter.

c. A notice of violation, a cease and desist order, or a notice of administrative civil penalty may be issued separately or in combination with another notice or order for the same violations or set of

related violations. (SCC 1295 § 13, 2005; SCC 1280 § 2 (part), 2004)

15.12.530 Delivery of Notice.

Any notice of violation, cease and desist order, permit revocation, notice of administrative civil penalty or other enforcement action pursuant to the requirements of this Chapter shall be subject to the following requirements:

- a. Delivery shall be deemed complete upon either personal delivery to the recipient or by deposit in the U.S. Mail postage pre-paid for first class delivery.
- b. Where the recipient of the notice or order is the owner of the premises, the address for notice or order shall be the address from the most recently issued equalized assessment roll for the premises.
- c. Where the owner or occupant of any premises cannot be located after reasonable efforts of the Administrator, the notice or order shall be deemed delivered after posting on the premises for a period of ten (10) business days. (SCC 1295 § 14, 2005; SCC 1280 § 2 (part), 2004)

15.12.540 Administrative Appeals.

a. Administrative hearings and appeals under this Chapter shall be to a Hearing Officer appointed pursuant to Government Code section 27720 et seq. Each Hearing Officer shall also meet the requirements of Government Code section 11425.30 and any other applicable restriction.

b. Any person served with a notice or order pursuant to this Chapter shall be provided an opportunity for a hearing prior to enforcement of an administrative civil penalty; or to appeal required corrective actions or the Administrator's findings of a violation of this Chapter.

1. Appeal Hearing. If a notice of violation or a cease and desist order is issued, but not concurrently with a notice of administrative civil penalty, the person who receives it shall be afforded an opportunity for a hearing to appeal the Administrator's findings or required corrective actions in the manner described in the following subsections:

A. To appeal the Administrator's findings, required corrective actions, or any provision of a notice or order, the person shall file a written request for hearing. The filing period for a request for hearing shall be set in written policy by the Department issuing the notice or order adopted pursuant to 15.12.330, but shall in no case be less than fifteen (15) calendar days. Any notice or order shall notify the recipient of the specific date by which the notice must be filed. The request for hearing shall be filed with the party issuing the notice or order at the address so designated on the notice and must be accompanied by payment of the Hearing Officer fee, established and amended from time to time by the Administrator based upon actual expense. If the person filing a request for hearing prevails on appeal, then the Hearing Officer fee will be refunded by the Administrator. A request for hearing shall be deemed filed within the filing period if it is postmarked within that period. If a request for hearing is not filed within the proscribed filing period, the notice, order or other action or determination by the Administrator shall become final.

B. Except as provided in subsection (b)(1)(C) of this section, within ninety (90) calendar days of receipt of the request for hearing by the Administrator, the hearing shall be scheduled by the Administrator with a Hearing Officer designated by the Administrator, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the Administrator shall have all the authority granted to an agency by those provisions. Except as provided in subsection (b)(1)(C) of this section, the Hearing Officer shall issue a decision within sixty (60) calendar days after the completion of any hearing conducted pursuant to this section.

C. When a cease and desist order is issued pursuant to this Chapter, the hearing shall be scheduled by the Administrator with a Hearing Officer within fifteen (15) calendar days of receipt by the Administrator of the request for hearing. The Hearing Officer shall issue a decision within fifteen (15) calendar days after the completion of any hearing conducted pursuant to this subsection.

2. Administrative Civil Penalty Hearing. If the Administrator issues a notice of administrative civil penalty, prior to enforcement of any penalty, the person receiving the notice shall be afforded an opportunity for a hearing. The notice shall establish a time, date and place for the hearing before a Hearing Officer, as follows.

A. The date for the hearing which shall be no less than thirty (30) calendar days and no more than ninety (90) days from the date of the notice, except that if the notice is issued concurrently

with a cease and desist order, the hearing date shall be no more than forty-five (45) days from the date of the notice.

B. Alternative dates for the hearing may be established by mutual consent of the person and the Administrator, or as ordered by the Hearing Officer.

3. Combined Hearing. An appeal hearing may be consolidated with a hearing for an administrative civil penalty, as follows:

A. If a notice of administrative civil penalty is issued concurrently with a notice of violation or cease and desist order for the same violation or a related set of violations, and if the person files a request for hearing, according to the procedures established in subsection (b)(1)(A) of this Section, the appeal hearing shall be conducted in conjunction with the administrative civil penalty hearing.

B. If a notice of administrative civil penalty is not issued concurrently with a notice of violation or cease and desist order, but is issued within a reasonably close period of time for the same violation or a related set of violations, and if the person receiving the notice or order files a request for hearing according to the procedures established in subsection (b)(1)(A) of this Section, the appeal hearing may be conducted in conjunction with the administrative civil penalty hearing, at the discretion of the Hearing Officer.

4. Recovery of Hearing Costs. The Administrator may recover the costs incurred by the County for hearings as follows:

A. Cost for Appeal Hearing. For appeal hearings, the provisions of Section 15.12.450 notwithstanding, the Administrator shall set a standard fee to be paid by the person at the time that the request for hearing is filed. The purpose of the fee is to recover the County's costs, or portion thereof, for the Hearing Officer. If the person filing a request for hearing prevails on appeal, then the hearing officer fee will be refunded by the Administrator. In addition, by order of the hearing officer, the County may be awarded its costs, including hearing officer fees above and beyond the standard fee, staff time, and attorneys' fees, in defending against an unsuccessful appeal brought without substantial merit, which costs may be charged jointly and severally against the appellants and recovered as costs of enforcement as provided herein. Such an award must be based upon a finding supported by a preponderance of the evidence that the appeal was without substantial merit or was taken for the sole purpose of delay.

B. Costs for Administrative Civil Penalty Hearing. If the County prevails in seeking an administrative civil penalty, by order of the hearing officer, the County may be awarded costs incurred while seeking the penalty, including hearing officer fees, staff time, and attorneys' fees.

5. If the Administrator finds that a violation(s) may pose an imminent and substantial endangerment to the public health or safety or the environment, any required corrective action established by a notice or order issued under this Chapter that are intended to correct such violations, shall take effect upon issuance, regardless of the filing of a request for hearing.

c. Administrative hearings for matters concerning this Chapter shall be conducted according to Sections 15.12.540 through 15.12.548 hereof. (SCC 1295 § 15, 2005: SCC 1280 § 2 (part), 2004)

15.12.543 Conduct of Administrative Hearings—Generally.

a. General. At the time set for hearing, the Hearing Officer shall state what the prima facie case is, what the burden of proof is, and what the range of penalties is. The Hearing Examiner shall proceed to hear the testimony of the Administrator, the person, and other competent persons respecting the circumstances of the violation, and other relevant facts concerning the matter. The Hearing Officer shall follow the rules of procedure for conducting hearings established by this Code.

b. Record of Oral Evidence at Hearing. A record of the entire hearing proceedings shall be made by either a certified court reporter or any other means of permanent recording determined to be appropriate by the Hearing Officer. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefore. Such fees may be established and revised from time-to-time by the Administrator.

c. Continuances. The Hearing Officer may, upon request of the person, a party in interest, or the Administrator, grant continuances from time to time for good cause shown, or upon his/her own motion. Any continuance granted shall in no way diminish the responsibility of the person and/or parties in interest for maintaining the premises, nor affect other requirements of this Chapter regarding time for challenging any decisions made or actions taken.

d. Oaths—Certification. The Hearing Officer or certified shorthand reporter shall administer the

oath or affirmation.

e. Evidence Rules. Government Code of the State of California, Section 11513, as presently written, or hereinafter amended, shall apply to hearings conducted under this Chapter.

f. Rights of Parties. Each party may represent themselves, or be represented by anyone of their choice. Each party may appear at the hearing and offer evidence in this matter and cross examine witnesses.

g. Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state.

f. Inspection of Premises. The Hearing Officer may inspect the premises involved in the hearing prior to, during or after the hearing, provided that:

1. Notice of such inspection shall be given to the parties before the inspection is made;
2. The parties are given an opportunity to be present during the inspection;
3. The Hearing Officer shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom; and
4. Each party then shall have a right to rebut or explain the matters so stated by the Hearing Officer either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record.

g. Burden of Proof. The burden of proof in hearings held pursuant to this Chapter shall be as follows:

1. In the case of any notice or order, the Administrator shall bear the burden of proof, by a preponderance of evidence, to show that a violation of this Chapter has occurred.
2. In the case of a notice of administrative civil penalty, the Administrator shall bear the burden of proof, by a preponderance of evidence, to show that a penalty should be assessed.
3. In the case of an appeal regarding the occurrence of a violation, or of required corrective actions, the appellant shall bear the burden of proof, by clear and convincing evidence, to show cause for amending or rejecting all or part of the corrective actions or requirements imposed by the Administrator by a notice or order. (SCC 1295 § 16, 2005)

15.12.545 Form and Contents of Decision—Finality of Decision.

a. Following the hearing, the hearing officer shall issue an order in writing no later than thirty (30) days from the date of the hearing, unless the time is waived by the parties. The order shall contain findings of fact and rationale appropriate to the violation and result, and a resolution of the essential issues raised, including the following:

1. Confirmation or denial of the occurrence of violations of this Chapter that are alleged by the Administrator;
2. Confirmation or rejection of any administrative civil penalty sought by the Administrator, and establishment of the monetary amount of any administrative civil penalty to be enforced.
3. Confirmation, amendment, or rejection of required corrective actions related to compliance with this Chapter that are imposed by the Administrator, but only if those requirements are appealed by the person.

b. The Hearing Officer's order concerning any administrative civil penalty shall be guided by factors including, but not limited to the following: the danger or harm to public health and safety or the environment created by the violation; actions by the person to prevent, correct, or conceal the violation; negligence; intent; recidivism; and any economic benefit associated with non-compliance.

c. The Hearing Officer's order shall uphold required corrective actions if the person fails to show clear and convincing evidence that the required corrective actions are unreasonable or unnecessary for achieving or demonstrating ongoing compliance with this Chapter. The Hearing Officer's order may amend, or reject required corrective actions, provided that compliance with this Chapter will be achieved. The Hearing Officer's order shall not address required corrective actions unless the person files a request for hearing according to the procedures established in Section 15.12.540(b)(1)(A) of this Chapter.

d. The Hearing Officer's order shall inform the person of the following:

1. If the violation is not corrected, or if any required corrective actions are not met within the time (s) required, that the violation may be abated by the County, without further notice or consent of the person or any party in interest, in such manner as may be ordered by the Hearing Officer, and the expense thereof, including all costs of enforcement, incurred by the County as a result of

the person's failure to comply, shall be recoverable by the County, and may be made a lien on the subject premises pursuant to the provisions of Government Code Section 25845. Additionally, upon entry of a second or subsequent order within a two-year period finding that the person is responsible for a condition that may be abated in accordance with this Chapter and Government Code Section 25845, or any successor provision thereto, except for conditions abated pursuant to Section 17980 of the Health and Safety Code, the Hearing Officer may order the person to pay treble the costs of abatement pursuant to Government Code Section 25845.5, or any successor provision thereto.

2. The time and manner by which a person may file a challenge to the Hearing Officer's order is governed by Government Code Section 53069.4, or any successor provision thereto.

3. Failure to comply with the Hearing Officer's order shall constitute a misdemeanor and is subject to additional enforcement action, including criminal penalties and additional civil and administrative penalties.

e. The order issued by the Hearing Officer pursuant to this Section shall be effective upon issuance. A copy of the order shall be delivered by the Hearing Officer in accordance with Section 15.12.530.

f. Preparation of a record of the administrative proceeding shall be governed by the provisions of Sacramento County Code, Chapter 1.06, as presently written or hereinafter amended.

g. The provisions of Sacramento County Code, Chapter 1.06 notwithstanding, any challenge to the order of the Hearing Officer concerning any appeal or administrative civil penalty shall be governed by Government Code Section 53069.4, or any successor provision thereto. Service of the notice of appeal authorized by Government Code Section 53069.4 on the County shall be served upon the Clerk of the Board.

h. After any notice or order made pursuant to this Chapter shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey such order. The Administrator may pursue, through County Counsel or the District Attorney, appropriate judicial action against any person who fails to comply with any such notice or order, including charging that person with a misdemeanor offense. (SCC 1295 § 17, 2005)

15.12.548 Procedures for Collection of Administrative Civil Penalty.

a. The administrative penalty shall be due and payable within thirty (30) days after the Hearing Officer's decision is issued. If the penalty is not timely paid, the County may pursue all reasonable and legal means in collecting those sums authorized and due.

b. All administrative civil penalties collected from actions brought pursuant to this Chapter shall be paid to the County department(s) enforcing this Chapter, and shall be deposited into a special account that shall be expended to fund the activities of the department to implement the applicable provisions of this Chapter. (SCC 1295 § 18, 2005)

15.12.549 Actions Not Prohibited.

This Chapter does not do any of the following:

a. Otherwise affect the authority of the Administrator to take any other action authorized by any other provision of law.

b. Restrict the power of a city attorney, district attorney, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

c. Prevent the Administrator from cooperating with, or participating in, proceeding specified in subsection 15.12.549(b). (SCC 1295 § 19, 2005)

15.12.550 Nuisance and Abatement.

a. Any condition in violation of the provisions of this Chapter, including, but not limited to, the maintenance or use of any illicit connection or the occurrence of any prohibited discharge, is declared and deemed to be a public nuisance.

b. At the request of the Administrator, the County may seek a court order to enjoin or abate the nuisance, or both. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the Administrator shall issue a cease and desist order to the owner and occupant, if any, of the Premises where the nuisance or threatened nuisance is occurring.

- c. At the request of the Administrator, the County may seek an abatement warrant or other appropriate judicial authorization to enter the Premises where any nuisance or threatened nuisance is occurring and to abate the condition and restore the area.
- d. In the event the nuisance constitutes an imminent danger to public safety or the environment, the Administrator may enter the premises from which the nuisance emanates, abate the nuisance and restore any property affected by the nuisance without prior notice to or consent from the owner or occupant thereof and without judicial warrant.
 - 1. An imminent danger shall include, but is not limited to, exigent circumstances created by the dispersal of pollutants, where such pollutants present a significant and immediate threat to the public health and safety or the environment.
 - 2. Notwithstanding the authority of the County to conduct an emergency abatement action, an administrative hearing pursuant to Section 15.12.540 shall follow the emergency abatement action. (SCC 1280 § 2 (part), 2004)

15.12.555 Enforcement Policy.

In the interest of achieving consistent enforcement of this Chapter, and in recognition of the need to have enforcement policy adapted to the structure and practices of various implementing agencies, each implementing agency that is delegated enforcement responsibility pursuant to this Chapter by the Administrator or the Board shall submit, to the Director of Water Resources, a draft written enforcement policy. Each such enforcement policy need only address those enforcement duties assigned to the implementing agency. Each policy shall address, if included in the delegated duties, guidelines for: the issuance of notices of violation, issuance of cease and desist orders, County stormwater permit administration, abatement, compliance deadlines, filing periods for administrative appeals, and imposition of administrative civil penalties. Enforcement policies shall take into consideration such factors as the nature, circumstances, extent, and gravity of the violation, and the violator's past and present efforts to comply. Upon approval by the Director of Water Resources, the enforcement policy shall be deemed adopted by the implementing agency who shall use such policy to achieve consistent enforcement standards by said implementing agency. Any amendments to an enforcement policy must be submitted to the Director of Water Resources for approval. (SCC 1295 § 20, 2005; SCC 1280 § 2 (part), 2004)

15.12.560 Administrative Civil Penalties.

- a. In addition to any other remedies provided by this Chapter, the person may be subject to an administrative civil penalty of up to five thousand dollars (\$5,000.00) per day for each violation of this Chapter. In seeking imposition of an administrative civil penalty, the Administrator shall commence the procedure by issuing a notice of administrative civil penalty, which shall be served and proof of service shall be made in the same manner as provided in Section 15.12.530 of this Chapter.
- b. The notice of administrative civil penalty shall state that the recipient has a right to a hearing as set forth in Section 15.12.540 of this Chapter.
- c. Procedures concerning notice, conduct of the hearing, and service shall be as provided in Section 15.12.540 of this Chapter.
- d. Subsections 15.12.560(a), (b), and (c) notwithstanding, the Administrator may establish a schedule of fines which, if adopted by the Board, and as it may be amended from time to time by the Board, shall become appended to this Chapter. The schedule of fines shall define specific violations for which an administrative civil penalty shall apply, and shall assign a specific monetary penalty to be assessed for each violation included in the schedule of fines. When the Administrator has found that such violation has occurred and has issued an appropriate notice or order pursuant to this Chapter, the administrative civil penalty shall be enforceable without further action being required. Any person receiving such a schedule of fines penalty shall be entitled to appeal the Administrator's findings giving rise to such penalty pursuant to the procedure established in Section 15.12.540 of this Chapter. (SCC 1295 § 21, 2005; SCC 1280 § 2 (part), 2004)

15.12.570 Criminal Penalties.

- a. Any person who violates any provision of this Chapter, undertakes to conceal any violation of this Chapter, continues any violation of this Chapter after notice thereof, fails to or fails to comply with a specified compliance requirement or a provision of a County stormwater permit, shall be guilty of a misdemeanor and upon conviction thereof be fined not more than one thousand dollars (\$1,000.00) or imprisoned for not more than six months in the County Jail, or both.
- b. Each day in which a violation occurs and each separate failure to comply with either a separate provision of this Chapter, a notice of violation, a cease and desist order, or failure to comply with specified compliance requirements or a provision of a County stormwater permit, shall constitute a separate violation of this Chapter punishable by fines or sentences in accordance herewith.
- c. The Administrator may authorize specifically designated County employees to issue citations for misdemeanor violations of this Chapter pursuant to Penal Code Section 836.5. (SCC 1295 § 22, 2005; SCC 1280 § 2 (part), 2004)

15.12.580 Miscellaneous Enforcement Provisions.

- a. Each and every remedy available for the enforcement of this Chapter shall be non-exclusive and it is within the discretion of the Administrator to seek cumulative remedies.
- b. The Administrator may request the County to file a civil action in a court of competent jurisdiction seeking an injunction against any threatened or continuing non-compliance with the provisions of this Chapter. Any temporary, preliminary or permanent injunction issued pursuant to this subsection may include an order for reimbursement to the County of all costs incurred in enforcing this Chapter, including, but not limited to, costs of inspection, investigation and monitoring, the costs of abatement undertaken at the expense of the County, costs relating to the restoration of the environment and any other costs or expenses authorized by law.
- c. The Administrator may request the County to file an action for civil damages in a court of competent jurisdiction seeking recovery of any of the following:
 - 1. All costs incurred in the enforcement of this Chapter, including, but not limited to, costs relating to investigation, sampling, monitoring, inspection, administrative expenses, all other expenses authorized by law and consequential damages.
 - 2. All costs incurred in mitigating harm to the environment or reducing the threat to human health.
 - 3. Damages for irreparable harm to the environment.
- d. The County is authorized to file actions for civil damages resulting from any trespass or nuisance occurring on public property or to the County storm drain system from any violation of this Chapter where such violation has caused damage, contamination or harm to the environment, public property or the County storm drain system.
- e. The remedies available to the County pursuant to the provisions of this Chapter shall not limit the right of the County or any law enforcement agency to seek any other legal or equitable remedy that may be available to it.
- f. Each day in which a violation occurs and each separate failure to comply with specified compliance requirements or provision of a County stormwater permit, a separate provision of this Chapter, an Administrative enforcement order, or a cease and desist order shall constitute a separate violation of this Chapter punishable by civil, criminal and administrative penalties in accordance with this Chapter. (SCC 1295 § 23, 2005; SCC 1280 § 2 (part), 2004)

Article 6 Recovery of Cost Abatement

15.12.600 Costs of Abatement—Confirmation.

- a. When proceedings under this Chapter result in the correction of a violation of this Chapter or in a final determination that a violation exists subsequent to the date specified in any notice issued pursuant to the provisions of this Chapter, the costs of such proceedings incurred by the County may be assessed against the property. Such costs may include, but are not limited to, those incurred in inspecting property, publication, mailing and posting of notices, conducting hearings, processing appeals and pursuing any judicial action. It is the purpose of this section to allow the assessment against property of costs of proceedings if a violation is corrected in any manner.
- b. The Administrator shall keep an account of the administrative and other costs of abatement, and shall submit to the Board for confirmation an itemized written report showing such costs and

their proposed assessment to the respective properties. The report shall be filed with the Clerk of the Board not later than fifteen (15) calendar days in advance of the confirmation hearing required below.

c. Upon receipt of the report, the Clerk of the Board shall schedule a public hearing to receive protests and confirm the report. A statement of the proposed assessment and notice of the time, date and place of the hearing, together with reference to the report on file with the Clerk, shall be mailed to the owner or owners of each parcel of property proposed to be assessed shown on the last equalized assessment roll available on the date of mailing of the notice or any other address or addresses ascertained to be more accurate. Such notice shall be mailed not later than fifteen (15) calendar days in advance of the hearing. Notice of the time, date and place of the public hearing by the Board shall be published once in a newspaper of general circulation published with the County.

With respect to each property proposed to be assessed for which the name or the owner or owners is not shown on the last equalized assessment roll or no address for an owner is shown on the last equalized assessment roll, the notice shall show the name or names of the owner or owners, if such name or names are shown on the last equalized assessment roll, the assessor's parcel number, the street address of the property, if the property has an address and the address is known to the Administrator, the name of the street or road upon which such property abuts, if the property abuts upon a street or road, the amount of the proposed assessment and reference to the report on file with the Clerk. Such publication shall be made not later than fifteen (15) calendar days in advance of the hearing.

d. At the time fixed for receiving and considering the report, the Board shall conduct a public hearing and shall receive and consider any objections from members of the general public or property owners liable to be assessed for the abatement. Written protests or objections shall specify the date, hour and description of the subject property under hearing. The Board may continue the hearing and delegate to the Administrator or his designee the responsibility of hearing individual protests and submitting a recommendation with respect thereto; provided that the Board provides an opportunity for individual consideration of each project upon receipt of the recommendation by the Administrator. The Board may modify the report if it is deemed necessary. The Board shall then confirm the report by motion or resolution. (SCC 1280 § 2 (part), 2004)

15.12.610 Costs—Assessments.

a. If the costs as confirmed are not paid within thirty (30) days of the date of mailing of the notice or date of publication pursuant to Section 15.12.600 of this chapter, such costs shall be assessed against the parcel of land pursuant to Section 25845 of the Government Code, and shall be transmitted to the Tax Collector for collection and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for ad valorem taxes.

b. If subsequent to the mailing of the notice of violation and prior to transmittal of the notice of unpaid costs to the Tax Collector for collection as set forth in subsection (a) of this section, the property subject to the notice of violation is sold, or title otherwise transferred to a bona fide purchaser, said costs shall be the responsibility of the owner of record as of the date said notice of violation was placed in the United States postal system or posted on the property.

c. In addition to assessing the unpaid costs as provided in subsection (a) of this section, the Tax Collector or his designated representative may pursue any remedy provided by law for collection of the unpaid costs. (SCC 1280 § 2 (part), 2004)

15.12.620 Treble Costs.

Pursuant to Government Code Section 25845.5, upon entry of a second or subsequent civil or criminal judgment within a two year period finding that an owner is responsible for a condition in violation of this Chapter that may be abated pursuant to Government Code Section 25845, a court may order the owner to pay treble the costs of abatement. (SCC 1280 § 2 (part), 2004)

15.12.630 Hearing of Protests.

Upon the day and hour fixed for the hearing, the Board shall hear and pass upon the report of the

Administrator together with any such protests or objections. The Board may make such revision, correction or modification of the report or the charge as it may deem just; and in the event the Board is satisfied with correctness of the charge, the report of the Administrator (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The decision of the Board on the report and the charge and on all objections or protests shall be final and conclusive. (SCC 1280 § 2 (part), 2004)

15.12.640 Assessment for Summary Abatement.

Where the charge to be made is the result of summary abatement pursuant to Section 15.12.550 (d), the Board may determine whether or not the action to abate was proper, and may confirm the charge or not as it may deem proper. (SCC 1295 § 24, 2005; SCC 1280 § 2 (part), 2004)

15.12.650 Time for Contest of Assessment.

The validity of any assessment made under the provisions of this Chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is ordered to be placed upon the assessment roll as provided herein. (SCC 1280 § 2 (part), 2004)

15.12.660 Filing Copy of Report With County Auditor.

A certified copy of the assessment shall be filed with the County Auditor on or before August 1. The descriptions of the parcels reported shall be those used for the same parcels on the map books of the County Assessor for the current year. (SCC 1280 § 2 (part), 2004)

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EXHIBIT F

Sacramento City Code**Up Previous Next Main Collapse Search Print No Frames**[Title 2 ADMINISTRATION AND PERSONNEL](#)**Chapter 2.48 BUILDING AND FIRE CODE ADVISORY AND APPEALS BOARD**

2.48.010 Board established.

The city of Sacramento building and fire code advisory and appeals board is hereby established. (Ord. 2006-041 § 3 (part))

2.48.020 Definitions.

As used in this chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

“City” means the city of Sacramento.

“City council” means the city council of the city of Sacramento.

“Board” means the building and fire code advisory and appeals board.

“Mayor” means the mayor of the city of Sacramento. (Ord. 2006-041 § 3 (part))

2.48.030 Powers and duties of board.

A. The board is established for the purpose of determining the suitability of alternate materials and methods of construction and providing reasonable interpretations of the following codes, as they are currently written or as they may be amended in the future:

1. 2001 California Building Code;
2. 2001 California Fire Code.

The board’s powers and duties shall extend to any code or codes duly adopted by the California Building Standards Commission that supersedes the 2001 California Building and Fire Codes.

B. The board may approve the use of any material, alternate design or method of construction not specifically prescribed by the applicable codes enumerated in this section, provided the board finds that the proposed design is satisfactory and complies with the provisions of the applicable codes and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in the applicable codes in suitability, strength, effectiveness, fire resistance, durability, safety, and sanitation. The board shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use.

C. The board shall have no authority relative to interpretation of the administrative provisions of these codes nor shall the board be empowered to waive requirements of these codes. any cost for tests or research required by the board to substantiate the claim of any appellant shall be the sole responsibility of the appellant. (Ord. 2006-041 § 3 (part))

2.48.040 Board membership.

The board shall consist of five members appointed by the mayor with the approval of the city council, subject to the following requirements:

- A. One member shall be a real estate developer who has completed at least two projects in California in the five years preceding appointment; each project must have a total valuation in excess of five million dollars (\$5,000,000.00);
- B. One member shall be a California licensed general building contractor who has been a primary general contractor on construction projects in the City during the two years immediately preceding appointment;
- C. One member shall be a California registered architect who has been licensed and has practiced in California for at least three years immediately preceding appointment;
- D. One member shall be a California registered structural engineer who has been licensed and has practiced in California for at least three years immediately preceding appointment;
- E. One member shall be a California licensed fire protection engineer who has been licensed and has practiced in California for at least three years immediately preceding appointment. (Ord. 2006-041 § 3 (part))

2.48.050 Term of office.

Members of the board shall serve a term of three years. In order to establish staggered terms, the initial appointments of members shall include two members for a one-year term, two members for a two-year term, and one member for a three-year term, as determined by the city clerk based on the drawing of lots. No member shall serve more than two consecutive terms. In the event a vacancy occurs during the term of any member, the mayor shall appoint, with the approval of the city council, a successor to serve the unexpired term, subject to the requirements set forth in Section 2.48.040. A member shall hold office until his or her successor has been appointed. A successor appointed to complete an unexpired term shall be eligible to serve up to two consecutive terms in addition to the unexpired term. (Ord. 2006-041 § 3 (part))

2.48.060 Conflict of interest and financial disclosure statements.

The provisions of Article III of Chapter 2.16 of this code governing conflicts of interest of board and commission members shall apply to members of the board. In addition, all appointees to the board shall be required to file statements disclosing financial interests pursuant to a conflict of interest code adopted for the board. (Ord. 2006-041 § 3 (part))

2.48.070 Chairperson and organization of the board.

At its first meeting, and annually thereafter, the board shall elect a board chairperson and a vice-chairperson, each of whom shall hold office at the pleasure of the board. During any absence of the chairperson from a meeting of the board, the vice-chairperson shall be the acting chairperson until the chairperson returns. When there is a vacancy in the office of chairperson or vice chairperson, the board shall fill that office from among its members. Staff support to the board shall be provided by one or more city employees designated by the city manager. (Ord. 2006-041 § 3 (part))

2.48.080 Board meetings.

The board shall establish a time and place for regular meetings to be held not less than once each month. The meetings shall be noticed and held in accordance with the provisions of the Ralph M. Brown Act (Government Code section 54950 et seq.). The board shall have the authority to notice and hold special meetings in the manner specified by the Ralph M. Brown Act. (Ord. 2006-041 § 3 (part))

2.48.090 Rules and regulations.

The board shall adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing to the appellant with a copy to the building official. (Ord. 2006-041 § 3 (part))

2.48.100 Quorum—Voting.

The quorum required for the board to conduct business shall be three members. The affirmative vote of a majority of the members present and eligible to vote shall be necessary to approve any item. (Ord. 2006-041 § 3 (part))

2.48.110 Review by building official.

A. The building official shall establish policies and procedures that provide for building official review of staff-level decisions regarding the use of any material, alternate design or method of construction not specifically prescribed in the California Building Code or the California Fire Code. These policies and procedures shall require the building official to provide a written decision within ten (10) calendar days of the filing of a completed request for building official review. A copy of the decision shall be delivered to the appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested. Requests for building official review shall be submitted on a form prescribed by the building official. Any person aggrieved by the building official's decision may appeal therefrom to the board as provided in Section 2.48.120(A).

B. At any time within ten (10) calendar days of the filing of a completed request for building official review, the building official may refer the request to the board for determination. In such a case, a hearing before the board shall be scheduled and conducted as set forth in Section 2.48.130.

C. In the event the building official does not issue a written decision or refer a request to the board within ten (10) calendar days of the filing of a completed request for building official review, the staff-level decision shall become a final decision from which any aggrieved person may appeal to the board as provided in Section 2.48.120(A). The staff-level decision shall be deemed final on the eleventh calendar day following the filing of the completed request for review; provided, however, if the eleventh calendar day falls on a Saturday, Sunday, or legal holiday, the decision shall be deemed made on the next following business day. (Ord. 2006-041 § 3 (part))

2.48.120 Appeals to board.

A. Any person aggrieved by the decision of the building official issued pursuant to Section 2.48.110(A) or a staff-level decision that becomes a final decision pursuant to Section 2.48.110(C) may appeal therefrom to the board at any time within ten (10) calendar days after receiving notice of the building official's decision or after the staff-level decision becomes final pursuant to Section 2.48.110(C). Such an appeal is taken by filing notice of appeal with the building official on a form provided by, and available from, the building official and payment of a fee as established by resolution of the city council. All supporting documents must be submitted with the form at the time the appeal is filed. Upon receipt of any appeal file and the appeal fee pursuant to this section, a hearing before the board shall be scheduled and conducted as set forth in Section 2.48.130.

B. Notwithstanding subsection A of this section, no person shall be allowed to appeal a staff-level decision regarding the use of any material, alternate design or method of construction not specifically prescribed in the California Building Code or the California Fire Code to the board unless (1) the person submitted a completed request for building official review as required by Section 2.48.110(A) and (2) the building official failed to either provide a written decision or refer the request to the board within ten (10) calendar days of the filing of the completed request for review.

C. Failure to properly file a written appeal as required under subsection A of this section will constitute a waiver of all right to an appeal hearing before the board, and the decision of the building official or the staff-level decision will be final. Failure to properly and timely appeal pursuant to subsection A of this section also shall constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the staff-level decision or decision of the building official.

D. Notwithstanding any other provision of this chapter, the board does not have jurisdiction to hear appeals of decisions relating to access for physically handicapped persons to public facilities and accommodations. Any staff-level decision that becomes a final decision pursuant to Section 2.48.110(C) or decision of the building official relating to access for physically handicapped persons to public facilities and accommodations shall be appealed to the joint city/county disabilities appeals board pursuant to Chapter 2.52 of the Sacramento City Code rather than the board. (Ord. 2006-041 § 3 (part))

2.48.130 Hearings.

In the event the building official refers a request to the board pursuant to Section 2.48.110(B), or upon receipt of any appeal filed and the appeal fee pursuant to Section 2.48.120, the building official shall calendar it for hearing as follows:

A. If the building official refers the request to the board, or if the appeal is received by the building official, not later than fifteen (15) calendar days prior to the next regular meeting of the board, it shall be calendared for hearing at said meeting.

B. If the building official refers the request to the board, or if the appeal is received by the building official, on a date less than fifteen (15) calendar days prior to the next regular meeting of the board, it shall be calendared for hearing at the next subsequent meeting of the board.

The building official shall not later than ten (10) calendar days prior to the hearing give notice of the time, place, and subject matter of the hearing to the person filing the appeal and each member of the board. The hearing shall be conducted according to the rules and regulations adopted by the board. The board shall render all decisions and findings in writing. A copy of the decision shall be delivered to the appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested. (Ord. 2006-041 § 3 (part))

2.48.140 Appeals to city council.

A. Any person aggrieved by the decision rendered by the board in an appeal hearing held pursuant to Section 2.48.130, may appeal the decision to the city council in accordance with Chapter 1.24. The appeal shall be made by filing a written notice thereof with the city clerk not later than ten (10) calendar days after receiving notice of the decision of the board. The city council shall hold a hearing on the appeal and its decision thereon shall be final. Instead of hearing the appeal, the city council may refer the matter to a hearing examiner pursuant to Chapter 1.24, in which case the hearing examiner's decision shall be final.

B. Failure to properly file a written appeal of the decision of the board within ten (10) calendar days of the decision will constitute a waiver of all right to an appeal hearing before the city council, and the board's decision will be final. Failure to properly and timely appeal the board's decision also shall constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the board's decision. (Ord. 2006-041 § 3 (part))

2.48.150 Compensation.

Pursuant to City Charter Section 29, the compensation commission shall establish the compensation members

of the board receive for attending board meetings. (Ord. 2006-041 § 3 (part))

2.48.160 General requirements.

Unless specifically provided otherwise in this chapter, the general requirements set forth in Chapter 2.40 of this code, governing the appointment of board and commission members, attendance at board and commission meetings, voting, term limits and removal, shall apply to the board. A member is subject to removal for good cause, neglect of duty or misconduct as provided in City Charter Section 232. (Ord. 2006-041 § 3 (part))

EXHIBIT G

- I. Any condition in violation of the city fire code, set forth in Title 15 of this code;
- J. Any condition recognized in law or in equity as constituting a public nuisance;
- K. The maintenance of the exterior of any vacant or unoccupied building or the interior of any such building which is readily visible from any public street or adjacent parcel of property in a state of unsightliness so as to constitute a blighted condition detrimental to the property values in the neighborhood or otherwise detrimental to the public welfare;
- L. Any condition in violation of Chapter 18.12 of this code (employer transportation systems management for the city of Sacramento);
- M. Any unimproved real property which has become a dumping ground for litter, garbage, junk, debris, or discarded vehicles, vehicle parts and/or vehicle hulks, and which real property has been subject to abatement action on one or more occasions by the city;
- N. Any illegal activity occurring on the property which is detrimental to the life, health, safety and welfare of the residents, neighbors or public. For purposes of this chapter, illegal activity is defined as any violation of state or federal law, rules or regulations, or local ordinance.

Once proceedings have been commenced pursuant to this title to declare a building or property to be a public nuisance under this subsection, no such building or property shall be deemed to be in compliance with this title solely because such building or property thereafter becomes occupied. (Ord. 2001-046 § 3 (part); Ord. 2000-017 § 5(a), (b); prior code § 61.04.401)

Article V Abatement Generally

8.04.110 Nuisance abatement.

Whenever the department head has inspected or caused to be inspected any premises and has found and determined that such premises are in violation of this code, he or she may commence proceedings to cause abatement of the nuisance as provided herein. (Prior code § 61.05.501)

8.04.120 Commencement of nuisance abatement proceedings—Issuance of notice and order.

To commence nuisance abatement proceedings, the department head shall issue a notice of violation and order to

abate (notice and order) directed to the record owner(s) of the premises. The notice and order shall contain:

- A. The street address and/or such other description as is required to identify the premises;
- B. A statement specifying the conditions which constitute the nuisance and declaring such conditions to be a public nuisance pursuant to Section 8.04.100 of this chapter;
- C. A statement of the action required to be taken to eliminate the public nuisance;
- D. A statement ordering the owner to abate the nuisance prior to a set date;
- E. A statement advising that any person having any record title or legal interest in the premises may appeal the notice and order provided that the appeal is made in writing as provided in Section 8.04.170 of this chapter;
- F. A statement that the appeal request must be in writing and filed with the department head within thirty (30) days of service of the notice and order;
- G. A statement that failure to appeal the notice and order will constitute a waiver of all right to an administrative hearing and will be a final determination of the matter;
- H. If the city intends to seek attorney's fees pursuant to Section 38773.5 of the Government Code, a

statement that the city intends to seek and recover attorney's fees. (Prior code § 61.05.502)

8.04.130 Fees imposed.

A fee shall be imposed on the owner of any property for which a notice and order is issued pursuant to this section. The fee shall be calculated to recover the total city cost of inspections and enforcement and shall be set by resolution of the city council. An additional fee which shall be set by resolution of the city council shall be imposed on the owner of the property at the conclusion of any matter in which a notice and order has been issued. This termination fee shall be calculated to recover the cost of closing the file, removing or placing liens, and other associated administrative costs. The fees imposed pursuant to this section shall be due and owing regardless of whether the public nuisance is eliminated in response to the notice and order. No fees shall be due and owing if an appeal is filed and the appeal is sustained. All fees shall be a personal obligation of the owner and a lien upon the property and are due and payable within thirty (30) days of issuance of the notice and order or closing of the file respectively; provided that if an appeal is filed, the fees shall be due and payable upon a final decision on the appeal. Any fee not paid within that time shall be collected pursuant to the procedure set forth in Chapter 8.96 of this code. (Prior code § 61.05.503)

8.04.140 Notice and order—Service generally.

The notice and order, and any amended or supplemental notice and order, shall be served upon the record owner and posted on the property; and one copy thereof shall be served on each of the following if known to the department head or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the department head to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed by the provisions of this section. (Prior code § 61.05.504)

8.04.150 Method of service.

Service of the notice and order may be made upon all persons entitled thereto in the manner described in Section 1.04.100 of this code. Service may be made upon the record owner at his or her or their address as it appears on the latest equalized assessment roll of Sacramento County, or as known to the department head. (Ord. 2006-070 § 2; Ord. 2004-008 § 22; prior code § 61.05.505)

8.04.160 Proof of service of notice and order.

Proof of service of the notice and order shall be certified by written declaration under penalty of perjury executed by the person effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt returned in acknowledgment of receipt by certified mail shall be made part of the department's permanent record. (Prior code § 61.05.506)

8.04.170 Appeal.

A. Form of Appeal. Any person having any record title or legal interest in the premises may appeal from any notice and order of the department head under this title by filing at the office of the department head within thirty (30) days from the date of service of such notice and order, a written appeal containing:

1. A brief statement setting forth the legal interest of each of the appellants in the premises involved in the notice and order;
 2. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;
 3. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested order or action should be reversed, modified, or otherwise set aside;
 4. The signatures of all parties named as appellants and their official mailing addresses, with statements from each appellant that each agrees to accept service of the written notice of the time and place of the appeal hearing and the decision of the hearing examiner at such address;
 5. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
- B. Processing of Appeal. Upon receipt of any appeal filed and the appeal fee pursuant to this section, the department head shall transmit said appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:
1. If the appeal is received by the department head not later than fifteen (15) days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.
 2. If the appeal is received by the department head on a date less than fifteen (15) days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.
- C. Noticing Appeal for Hearing. Written notice of the time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at his or her address shown on the appeal.
- D. Appeal Fee. The department may collect and require an appeal fee to be paid at the time the written appeal notice is filed. The appeal fee shall be set by resolution of the city council. The fee shall be calculated to recover the total city costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, hearing examiner compensation, preparation and service of notices and staff appearance in the appeal hearing. No appeal shall proceed without payment of the fee at the time the appeal is filed provided that the department head may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice and order, and other factors indicating good faith attempts to comply.
- E. Effect of Failure to Appeal. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.
- F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.
- G. Staying of Order Under Appeal. Enforcement of any notice and order of the department head issued under this title shall be stayed during the pendency of an appeal therefrom which is properly and timely filed. (Prior code § 61.05.507)

8.04.180 Hearings—Generally.

At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the department head, the owner, and other competent persons respecting the condition of the premises, and other relevant facts concerning the matter. (Prior code § 61.05.508)

8.04.190 Record of oral evidence at hearing.

A. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

B. Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended. (Prior code § 61.05.509)

8.04.200 Continuances.

The hearing examiner may, upon request of the owner of the premises or upon request of the department head, grant continuances from time to time for good cause shown, or upon his or her own motion. (Prior code § 61.05.510)

8.04.210 Oaths—Certification.

The hearing examiner or designee shall administer the oath or affirmation. (Prior code § 61.05.511)

8.04.220 Evidence rules.

Government Code of the State of California, Section 11513, subsections (a), (b) and (c), as presently written or hereinafter amended, shall apply to hearings under this title. (Prior code § 61.05.512)

8.04.230 Rights of parties.

A. Each party may represent themselves, or be represented by anyone of their choice.

B. If a party does not proficiently speak or understand the English language, he or she may provide an interpreter, at the party's own cost, to translate for the party. An interpreter shall not have had any involvement in the issues of the case prior to the hearing. (Prior code § 61.05.513)

8.04.240 Official notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or any of its departments. (Prior code § 61.05.514)

8.04.250 Inspection of premises.

A. The hearing examiner may inspect the premises involved in the hearing prior to, during or after the hearing, provided that:

1. Notice of such inspection shall be given to the parties before the inspection is made;
2. The parties are given an opportunity to be present during the inspection; and
3. The hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom.

B. Attorney's Fees. Pursuant to Section 38773.5 of the Government Code, in any proceeding brought to enforce any order, the prevailing party shall be entitled to recover attorney's fees, provided that, pursuant to Section 38773.5, attorney's fees shall only be available in those proceedings in which the city has provided notice at the commencement of such proceedings that it intends to seek and recover attorney's fees. (Ord. 2000-017 § 4(a)(18); prior code § 61.07.702)

8.04.300 Failure to complete work.

A. Whenever the required abatement is not completed within the time so specified in the order, the department head may, in addition to any other remedy herein provided, cause the nuisance to be abated, so as to put the premises in such a condition that no violation of this code exists thereon.

B. The cost of such abatement shall be assessed against the property as a lien or made a personal obligation of the owner thereof as provided in Article VIII of this chapter. (Prior code § 61.07.703)

8.04.310 Extension of date for completion.

A. Upon receipt of an application from the person required to conform to the order by a date fixed in the order, and an agreement by such person that he or she will comply with the order if allowed additional time, the department head may, in his or her discretion, grant an extension of time, not to exceed an additional one hundred twenty (120) days, within which to complete such abatement, if the department head determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property.

B. The authority of the department head to extend time is limited to the physical abatement of the nuisance or for such other purposes as may be reasonably required by the circumstances of the case, but such extension will not in any way affect or extend the time to appeal the order. (Prior code § 61.07.704)

8.04.320 Interference with work prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city, or with any person who owns or holds any estate or interest in any premises on which a nuisance exists and which must be abated under the provisions of this code, whenever such officer, employee, contractor or authorized representative of the city, or person having an interest or estate in such premises is engaged in the work of abating any nuisance as required by the provisions of this code, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this code. (Prior code § 61.07.705)

Article VII Summary Abatement

8.04.330 Dangerous condition.

If, in the opinion of the department head, there exists a condition on any premises which is of such a nature as to be imminently dangerous to the public health, safety or welfare, which, if not abated according to the procedures of this code, would, during the pendency of the proceedings, subject the public to potential harm of a serious nature, the same may be abated forthwith without compliance with the provisions of this code. Abatement may include, but is not limited to boarding of windows, doors and other openings to city specifications, removal of junk and debris, and securing the perimeter of the property with fencing, gates or barricades (to prevent further occurrences of the nuisance activity). (Prior code § 61.09.901)

8.04.350 Lien or personal obligation.

The cost of abatement including all administrative

costs of any action taken hereunder shall be assessed against the subject premises as a lien or made a personal obligation to the owner or both a personal obligation and a lien as provided in Article VIII of this chapter. (Prior code § 61.09.903)

8.04.360 Summary abatement of graffiti.

A. The city council finds that proliferation of graffiti, especially gang-related graffiti, presents an imminent danger to the public safety and welfare. Law enforcement officials and other experts agree that immediate removal of gang-related graffiti is necessary to reduce the risk of violent and other criminal activities associated with gangs and gang territories. The presence of graffiti which is not abated immediately encourages the creation of additional graffiti, resulting in neighborhood blight and increased costs of abatement.

B. Notwithstanding the provisions of Section 8.04.340 of this chapter, the department head or his or her designee is authorized to summarily abate gang-related graffiti. The abatement may be undertaken by city staff or by outside contractors.

For purposes of this section only, "gang-related graffiti" shall be defined as graffiti, as that term is defined in Section 8.24.020 of this title, which is placed on private or public property by either of the following: (1) a criminal street gang as that term is defined by Penal Code Section 186.22; or (2) any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of graffiti activity, which has a common name(s) or common identifying sign(s) or symbol(s), and whose members individually or collectively engage in or have engaged in a pattern of graffiti activity.

C. The expense of abatement may be assessed against a minor responsible for creating the graffiti nuisance and the parents or guardians who have custody and control of the minor, or any other person responsible for creating the graffiti nuisance, pursuant to the procedures in Chapter 8.24 of this title. (Ord. 2000-041 § 4: Ord. 97-073 § 1: prior code § 61.09.904)

Article VIII. Recovery of Cost of Abatement

8.04.370 Property owner's liability for cost of abatement.

Every owner of property within the city is liable to the city for the cost of abatement of a public nuisance located on his or her premises conducted pursuant to Article VI of this chapter. (Prior code § 61.10.1000)

8.04.380 Account of expense—Filing of report—Contents.

A. The department head shall keep an itemized account of the expense incurred by the city in abating nuisances under the provisions of this code including all administrative costs. Upon the completion of the work of abatement, such department head shall prepare and file with the city clerk a report specifying the work done, the itemized and total cost of the work, a description of the real property at which the work was performed, and the names and addresses of the persons entitled to notice pursuant to Section 8.04.150 of this chapter.

B. The department head shall cause notice to be given to the Department of Motor Vehicles within five days after the date of removal identifying the vehicle(s) or parts thereof and any evidence of registration

available, including, but not limited to, registration certificates or title or license plates.

C. In the event the hearing examiner finds, pursuant to sworn statement of the owner of any premises or otherwise, that a vehicle which is ordered abated was placed on the premises without the consent of the owner, who did not later acquiesce to its presence on such premises, then the hearing examiner shall certify the finding to the department head, who shall not allocate the cost of the removal of such vehicle to the owner of the premises in the report filed with the city clerk. (Prior code § 61.10.1001)

8.04.390 Report transmitted to delinquency lien hearing officer.

Upon receipt of the report prepared pursuant to Section 8.04.380 of this chapter, the city clerk shall transmit it to a delinquency lien hearing officer appointed by the city manager for consideration. The delinquency lien hearing officer shall fix a schedule for hearing the report, and any protests or objections thereto. The department head shall cause notice of the hearing scheduled before the delinquency lien hearing officer to be mailed at least thirty (30) days prior to the date of the scheduled hearing to the address of the owner as shown on the last equalized assessment roll or such other address of the owner as may be known to the department head. The notice shall state that all protests or objections shall be filed in accordance with section 8.04.400 of this chapter. (Ord. 2006-071 § 1; prior code § 61.10.1002)

8.04.400 Making of protests and objections.

Any owner of affected property may file a written protest or objection with the Code Enforcement Department at least ten (10) days before the date specified in the notice given pursuant to Section 8.04.390 of this chapter. Each written protest or objection must contain a description of the property and the grounds of the protest or objection. The Code Enforcement Department shall endorse on every such protest or objection the date it was received. The Code Enforcement Department shall present such protests or objections to the delinquency lien hearing officer at the time set for the hearing, and no other protests or objections shall be considered. Any protests or objections not filed in writing at least ten (10) days prior to the date set for the hearing, and for which City staff is not prepared to address, shall be continued to the date of a future hearing for consideration by the delinquency lien hearing officer. (Ord. 2006-071 § 2; prior code § 61.10.1003)

8.04.410 Hearing of protests.

Upon the day and hour fixed for the hearing the delinquency lien hearing officer shall hear and pass upon the report of the department head together with any such protests or objections. The delinquency lien hearing officer shall follow, as nearly as practicable, those procedures that the city council would have followed if it had conducted the hearing. The delinquency lien hearing officer may make such revision, correction or modification of the report or the charge as he or she may deem just, and shall submit the report to the city clerk to be transmitted to the city council. The city clerk shall also send the results of the hearing to the objecting owners by first class mail, and shall include the date and time of the public hearing to be held by the city council in accordance with Section 8.04.430(A) of this chapter. The decision of the delinquency lien hearing officer on the report and on all objections or protests shall be final and conclusive. (Prior code § 61.10.1004)

8.04.420 Nature of protests to be heard.

A. Except as provided in subsection B of this section, the protests heard by the delinquency lien hearing officer pursuant to Section 8.04.410 of this chapter shall relate only to the charge to be made for abatement, and no protest concerning the action of the department head or the hearing examiner in ordering the abatement of the

nuisance shall be heard at this time.

B. Where the charge to be made is the result of summary abatement pursuant to Section 8.04.330 of this chapter, the delinquency lien hearing officer may determine whether or not the action to abate was proper, and may modify the charge or not as he or she may deem proper. (Prior code § 61.10.1005)

8.04.430 Personal obligation, lien, or special assessment.

A. Upon receipt of the delinquency lien hearing officer's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report and determine the costs of abatement. The public hearing shall be limited to the issue of whether the hearing before the delinquency lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who file an objection or protest and appear before the delinquency lien hearing officer shall be permitted to protest at the city council hearing.

B. Upon taking action under subsection A, the city council may order that the costs of abatement be made a personal obligation of the property owner and either a nuisance abatement lien or a special assessment against the property.

C. If an action or proceeding is commenced to recover the costs, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to California Government Code section 38773.5, attorneys' fees shall only be available where the city has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

D. A nuisance abatement lien may be recorded and enforced against the property pursuant to the provisions of California Government Code section 38773.1. A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys' fees and costs including, but not limited to, costs incurred for processing and recording the lien and providing notice to the property owner.

E. As an alternative to a nuisance abatement lien, the costs of abatement may be made a special assessment against the property. The special assessment may be collected at the same time and in the same manner as ordinary municipal taxes and shall be subject to the same penalties and procedures, including the sale of the property in case of delinquency, as provided for ordinary municipal taxes. The special assessment shall continue until the assessment and all interest and penalties due and payable thereon have been paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. (Ord. 2006-047 § 1: prior code § 61.10.1006)

8.04.440 Time for contest of assessment.

The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed by the city council. (Ord. 2000-017 § 4(a)(19); prior code § 61.10.1007)

8.04.450 Filing copy of report with county auditor.

A certified copy of the assessment shall be filed with the county auditor on or before August 1st. The descriptions of the parcels reported shall be those used for the same parcels on the map books of the county assessor for the current year. (Prior code § 61.10.1008)

D. **Appeal Fee.** The department may collect and require an appeal fee to be paid at the time the written appeal notice is filed. The appeal fee shall be set by resolution of the city council. The fee shall be calculated to recover the total city costs incurred in the appeal including, but not limited to, staff time to process and handle the appeal, hearing examiner compensation, preparation and service of notices and staff appearance in the appeal hearing. No appeal shall proceed without payment of the fee at the time the appeal is filed provided that the department head may waive or defer the appeal fee upon written request for good cause shown. Good cause may include severe economic hardship, significant attempts to comply with the notice and order, and other factors indicating good faith attempts to comply.

E. **Effect of Failure to Appeal.** Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.

F. **Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.**

G. **Staying of Order Under Appeal.** Enforcement of any notice and order of the department head issued under this title shall be stayed during the pendency of an appeal therefrom which is properly and timely filed. (Prior code § 61.05.507)

8.04.180 Hearings—Generally.

At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the department head, the owner, and other competent persons respecting the condition of the premises, and other relevant facts concerning the matter. (Prior code § 61.05.508)

8.04.190 Record of oral evidence at hearing.

A. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

B. Preparation of a record of the proceeding shall be governed by California Code of Civil Procedure Section 1094.6, as presently written or hereinafter amended. (Prior code § 61.05.509)

8.04.200 Continuances.

The hearing examiner may, upon request of the owner of the premises or upon request of the department head, grant continuances from time to time for good cause shown, or upon his or her own motion. (Prior code § 61.05.510)

8.04.210 Oaths—Certification.

The hearing examiner or designee shall administer the oath or affirmation. (Prior code § 61.05.511)

8.04.220 Evidence rules.

Government Code of the State of California, Section 11513, subsections (a), (b) and (c), as presently written or hereinafter amended, shall apply to hearings under this title. (Prior code § 61.05.512)

8.04.230 Rights of parties.

A. Each party may represent themselves, or be represented by anyone of their choice.

B. If a party does not proficiently speak or understand the English language, he or she may provide an interpreter,

at the party's own cost, to translate for the party. An interpreter shall not have had any involvement in the issues of the case prior to the hearing. (Prior code § 61.05.513)

8.04.240 Official notice.

In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or which may appear in any of the official records of the city or any of its departments. (Prior code § 61.05.514)

8.04.250 Inspection of premises.

A. The hearing examiner may inspect the premises involved in the hearing prior to, during or after the hearing, provided that:

1. Notice of such inspection shall be given to the parties before the inspection is made;
2. The parties are given an opportunity to be present during the inspection; and
3. The hearing examiner shall state for the record during the hearing, or file a written statement after the hearing for inclusion in the hearing record, upon completion of the inspection, the material facts observed and the conclusion drawn therefrom.

B. Each party then shall have a right to rebut or explain the matters so stated by the hearing examiner either for the record during the hearing or by filing a written statement after the hearing for inclusion in the hearing record. (Prior code § 61.05.515)

8.04.260 Form and contents of decision—Finality of decision.

If it is shown by a preponderance of the evidence that the condition of the premises constitutes a public nuisance:

A. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented. The decision shall also require the owner to commence abatement of the nuisance not later than fifteen (15) days after the issuance of the decision, and that the abatement be completed within such time as specified by the hearing examiner, or in the alternative, within the time designated by the department head. The decision shall inform the owner that if the nuisance is not abated within the time specified, the nuisance may be abated by the city without further notice in such manner as may be ordered by the department head and the expense thereof made a lien on the property involved and/or a personal obligation.

B. The decision shall also inform the applicant that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be forthwith delivered to the parties personally or sent to them by certified mail. The decision shall be final when signed by the hearing examiner and served as herein provided. (Prior code § 61.05.516)

8.04.270 Service of the hearing examiner's decision.

Upon issuance of the decision, the department head shall post a copy thereof conspicuously on the premises involved and shall serve a copy on the record owner, in the same manner as set forth in Section 8.04.150 of this chapter, and one copy shall be served on each of the following, if known to the department head or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in the premises. (Prior code § 61.05.517)

Article VI Enforcement of Order of Hearing Examiner

8.04.280 Enforcement of notice and order or hearing examiner's decision.

After any notice and order issued pursuant to this code shall have become final by failure to file a timely appeal or after hearing examiner's decision on appeal is rendered, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Any such person who fails to comply with any such order or decision is guilty of a misdemeanor. (Prior code § 61.07.701)

8.04.290 Failure to obey order.

A. If, after any notice and order has become final or order of the hearing examiner on appeal is made pursuant to this chapter the person(s) to whom such order has been directed shall fail, neglect or refuse to obey such order, the department head may, without further notice:

1. Cause such person(s) to be prosecuted;
2. Institute any appropriate action to abate the conditions which constitute a public nuisance;
3. Issue an administrative penalty order pursuant to Section 1.28.010 of this code.

B. Attorney's Fees. Pursuant to Section 38773.5 of the Government Code, in any proceeding brought to enforce any order, the prevailing party shall be entitled to recover attorney's fees, provided that, pursuant to Section 38773.5, attorney's fees shall only be available in those proceedings in which the city has provided notice at the commencement of such proceedings that it intends to seek and recover attorney's fees. (Ord. 2000-017 § 4(a)(18); prior code § 61.07.702)

8.04.300 Failure to complete work.

A. Whenever the required abatement is not completed within the time so specified in the order, the department head may, in addition to any other remedy herein provided, cause the nuisance to be abated, so as to put the premises in such a condition that no violation of this code exists thereon.

B. The cost of such abatement shall be assessed against the property as a lien or made a personal obligation of the owner thereof as provided in Article VIII of this chapter. (Prior code § 61.07.703)

8.04.310 Extension of date for completion.

A. Upon receipt of an application from the person required to conform to the order by a date fixed in the order, and an agreement by such person that he or she will comply with the order if allowed additional time, the department head may, in his or her discretion, grant an extension of time, not to exceed an additional one hundred twenty (120) days, within which to complete such abatement, if the department head determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property.

B. The authority of the department head to extend time is limited to the physical abatement of the nuisance or for such other purposes as may be reasonably required by the circumstances of the case, but such extension will not in any way affect or extend the time to appeal the order. (Prior code § 61.07.704)

8.04.320 Interference with work prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of the city, or with any person who owns or holds any estate or interest in any premises on which a nuisance exists and which must be abated under the provisions of this code, whenever such officer, employee, contractor or authorized representative of the city, or person having an interest or estate in such premises is engaged in the work of abating any nuisance as required by the provisions of this code, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this code. (Prior code § 61.07.705)

Article VII Summary Abatement

8.04.330 Dangerous condition.

If, in the opinion of the department head, there exists a condition on any premises which is of such a nature as to be imminently dangerous to the public health, safety or welfare, which, if not abated according to the procedures of this code, would, during the pendency of the proceedings, subject the public to potential harm of a serious nature, the same may be abated forthwith without compliance with the provisions of this code. Abatement may include, but is not limited to boarding of windows, doors and other openings to city specifications, removal of junk and debris, and securing the perimeter of the property with fencing, gates or barricades (to prevent further occurrences of the nuisance activity). (Prior code § 61.09.901)

8.04.350 Lien or personal obligation.

The cost of abatement including all administrative

costs of any action taken hereunder shall be assessed against the subject premises as a lien or made a personal obligation to the owner or both a personal obligation and a lien as provided in Article VIII of this chapter. (Prior code § 61.09.903)

8.04.360 Summary abatement of graffiti.

A. The city council finds that proliferation of graffiti, especially gang-related graffiti, presents an imminent danger to the public safety and welfare. Law enforcement officials and other experts agree that immediate removal of gang-related graffiti is necessary to reduce the risk of violent and other criminal activities associated with gangs and gang territories. The presence of graffiti which is not abated immediately encourages the creation of additional graffiti, resulting in neighborhood blight and increased costs of abatement.

B. Notwithstanding the provisions of Section 8.04.340 of this chapter, the department head or his or her designee is authorized to summarily abate gang-related graffiti. The abatement may be undertaken by city staff or by outside contractors.

For purposes of this section only, “gang-related graffiti” shall be defined as graffiti, as that term is defined in Section 8.24.020 of this title, which is placed on private or public property by either of the following: (1) a criminal street gang as that term is defined by Penal Code Section 186.22; or (2) any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of graffiti activity, which has a common name(s) or common identifying sign(s) or symbol(s), and whose members individually or collectively engage in or have engaged in a pattern of graffiti activity.

C. The expense of abatement may be assessed against a minor responsible for creating the graffiti nuisance and the parents or guardians who have custody and control of the minor, or any other person responsible for creating the graffiti nuisance, pursuant to the procedures in Chapter 8.24 of this title. (Ord. 2000-041 § 4: Ord. 97-073 § 1: prior code § 61.09.904)

Article VIII. Recovery of Cost of Abatement

8.04.370 Property owner's liability for cost of abatement.

Every owner of property within the city is liable to the city for the cost of abatement of a public nuisance located on his or her premises conducted pursuant to Article VI of this chapter. (Prior code § 61.10.1000)

8.04.380 Account of expense—Filing of report—Contents.

A. The department head shall keep an itemized account of the expense incurred by the city in abating nuisances

under the provisions of this code including all administrative costs. Upon the completion of the work of abatement, such department head shall prepare and file with the city clerk a report specifying the work done, the itemized and total cost of the work, a description of the real property at which the work was performed, and the names and addresses of the persons entitled to notice pursuant to Section 8.04.150 of this chapter.

B. The department head shall cause notice to be given to the Department of Motor Vehicles within five days after the date of removal identifying the vehicle(s) or parts thereof and any evidence of registration available, including, but not limited to, registration certificates or title or license plates.

C. In the event the hearing examiner finds, pursuant to sworn statement of the owner of any premises or otherwise, that a vehicle which is ordered abated was placed on the premises without the consent of the owner, who did not later acquiesce to its presence on such premises, then the hearing examiner shall certify the finding to the department head, who shall not allocate the cost of the removal of such vehicle to the owner of the premises in the report filed with the city clerk. (Prior code § 61.10.1001)

8.04.390 Report transmitted to delinquency lien hearing officer.

Upon receipt of the report prepared pursuant to Section 8.04.380 of this chapter, the city clerk shall transmit it to a delinquency lien hearing officer appointed by the city manager for consideration. The delinquency lien hearing officer shall fix a schedule for hearing the report, and any protests or objections thereto. The department head shall cause notice of the hearing scheduled before the delinquency lien hearing officer to be mailed at least thirty (30) days prior to the date of the scheduled hearing to the address of the owner as shown on the last equalized assessment roll or such other address of the owner as may be known to the department head. The notice shall state that all protests or objections shall be filed in accordance with section 8.04.400 of this chapter. (Ord. 2006-071 § 1: prior code § 61.10.1002)

8.04.400 Making of protests and objections.

Any owner of affected property may file a written protest or objection with the Code Enforcement Department at least ten (10) days before the date specified in the notice given pursuant to Section 8.04.390 of this chapter. Each written protest or objection must contain a description of the property and the grounds of the protest or objection. The Code Enforcement Department shall endorse on every such protest or objection the date it was received. The Code Enforcement Department shall present such protests or objections to the delinquency lien hearing officer at the time set for the hearing, and no other protests or objections shall be considered. Any protests or objections not filed in writing at least ten (10) days prior to the date set for the hearing, and for which City staff is not prepared to address, shall be continued to the date of a future hearing for consideration by the delinquency lien hearing officer. (Ord. 2006-071 § 2: prior code § 61.10.1003)

8.04.410 Hearing of protests.

Upon the day and hour fixed for the hearing the delinquency lien hearing officer shall hear and pass upon the report of the department head together with any such protests or objections. The delinquency lien hearing officer shall follow, as nearly as practicable, those procedures that the city council would have followed if it had conducted the hearing. The delinquency lien hearing officer may make such revision, correction or modification of the report or the charge as he or she may deem just, and shall submit the report to the city clerk to be transmitted to the city council. The city clerk shall also send the results of the hearing to the objecting owners by first class mail, and shall include the date and time of the public hearing to be held by the city council in accordance with Section 8.04.430(A) of this chapter. The decision of the delinquency lien hearing officer on the report and on all objections or protests shall be final and conclusive. (Prior code § 61.10.1004)

8.04.420 Nature of protests to be heard.

A. Except as provided in subsection B of this section, the protests heard by the delinquency lien hearing officer pursuant to Section 8.04.410 of this chapter shall relate only to the charge to be made for abatement, and no protest concerning the action of the department head or the hearing examiner in ordering the abatement of the nuisance shall be heard at this time.

B. Where the charge to be made is the result of summary abatement pursuant to Section 8.04.330 of this chapter, the delinquency lien hearing officer may determine whether or not the action to abate was proper, and may modify the charge or not as he or she may deem proper. (Prior code § 61.10.1005)

8.04.430 Personal obligation, lien, or special assessment.

A. Upon receipt of the delinquency lien hearing officer's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report and determine the costs of abatement. The public hearing shall be limited to the issue of whether the hearing before the delinquency lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who file an objection or protest and appear before the delinquency lien hearing officer shall be permitted to protest at the city council hearing.

B. Upon taking action under subsection A, the city council may order that the costs of abatement be made a personal obligation of the property owner and either a nuisance abatement lien or a special assessment against the property.

C. If an action or proceeding is commenced to recover the costs, the prevailing party shall be entitled to recover reasonable attorneys' fees, provided that, pursuant to California Government Code section 38773.5, attorneys' fees shall only be available where the city has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city in the action or proceeding.

D. A nuisance abatement lien may be recorded and enforced against the property pursuant to the provisions of California Government Code section 38773.1. A nuisance abatement lien may be foreclosed by an action brought by the city for a money judgment. As part of the foreclosure action, the city may recover reasonable attorneys' fees and costs including, but not limited to, costs incurred for processing and recording the lien and providing notice to the property owner.

E. As an alternative to a nuisance abatement lien, the costs of abatement may be made a special assessment against the property. The special assessment may be collected at the same time and in the same manner as ordinary municipal taxes and shall be subject to the same penalties and procedures, including the sale of the property in case of delinquency, as provided for ordinary municipal taxes. The special assessment shall continue until the assessment and all interest and penalties due and payable thereon have been paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to the special assessment. (Ord. 2006-047 § 1: prior code § 61.10.1006)

8.04.440 Time for contest of assessment.

The validity of any assessment made under the provisions of this chapter shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed by the city council. (Ord. 2000-017 § 4(a)(19); prior code § 61.10.1007)

8.04.450 Filing copy of report with county auditor.

A certified copy of the assessment shall be filed with the county auditor on or before August 1st. The descriptions of the parcels reported shall be those used for the same parcels on the map books of the county assessor for the current year. (Prior code § 61.10.1008)

Article IX. Repair and Storage of Boats

8.04.460 Definitions.

For purposes of this article, the terms “boat” and “vessel” shall include boats, ships, sailboats, barges, and every structure adapted to be navigated from place to place for the transportation of merchandise or persons, whether or not propelled by machinery. (Prior code § 61.15.1500)

8.04.470 Boat repair.

It is unlawful and a public nuisance for any person to engage in repair or maintenance of any boat or vessel in any residential zone outside a fully enclosed structure, except that repair or maintenance of a boat or vessel may be performed outside a fully enclosed structure where elapsed time between the beginning and end of the repair or maintenance does not exceed forty-eight (48) hours. (Prior code § 61.15.1501)

8.04.480 Boat storage.

It is unlawful and a public nuisance for any person to store a boat or vessel in any residential zone where it can be seen from the public right-of-way, unless the vessel or boat is currently registered to an occupant of the premises and is placed on a trailer currently registered to an occupant of the premises and parked on a paved surface. (Prior code § 61.15.1502)

COUNTY OF SACRAMENTO AGREEMENT NO. # _____

AGREEMENT

THIS AGREEMENT is made and entered into as of this 9th day of December, 2003, between the COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and the CITY OF SACRAMENTO, a charter municipal corporation (hereinafter referred to as "CITY").

RECITALS

WHEREAS, in 1987 Congress amended Section 402 of the Federal Clean Water Act to require the United States Environmental Protection Agency ("EPA") to promulgate regulations for permits for stormwater discharges; and

WHEREAS, the regulations are designed to control pollutants associated with stormwater discharges through the use of the National Pollutant Discharge Elimination System ("NPDES") permit system which allows the lawful discharge of stormwater into the waters of the United States; and

WHEREAS, the EPA has delegated to the State of California the authority to issue NPDES permits; and

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") has been charged by the California State Water Resources Control Board with the responsibility to issue NPDES permits within the Central Valley Region; and

WHEREAS, on December 6, 2002, the Regional Board adopted a NPDES stormwater permit No. CAS0082597, Order No. R5-2002-0206, (hereinafter referred to as "Permit") for the County of Sacramento and the Cities of Citrus Heights, Elk Grove, Folsom, Galt, and Sacramento (PERMITTEES); and

WHEREAS, the PERMITTEES must comply with the Permit, its successor Permit, and other stormwater compliance documents subject to modification by the Regional Board; and

WHEREAS, the CITY is responsible for overseeing regulatory compliance with the Permit for areas within its jurisdiction; and

WHEREAS, the CITY has adopted a Stormwater Ordinance set forth at Chapter 13.16 of the Sacramento City Code to prohibit the discharge of pollutants to the CITY's municipal stormwater conveyance system; and

City Clerk's Copy

CITY **2003-221**
AGREEMENT NO. _____

CITY
AGREEMENT NO. 2003-221

WHEREAS, Provision C.9 of the Permit includes the requirement to track, inspect and ensure compliance with the Stormwater Ordinance at industrial and commercial facilities; and

WHEREAS, COUNTY Environmental Management Department, as both the State designated Certified Unified Program Agency (CUPA) and Environmental Health Agency for Sacramento County, is currently tracking, conducting inspections and otherwise regulating, pursuant to Chapter 6.11, Division 20 and Chapter 4, Division 104 of the Health and Safety Code, the majority of the commercial and industrial facilities that are subject to compliance with the Stormwater Ordinance; and

WHEREAS, CITY has determined that the cost to track, inspect and ensure stormwater compliance at commercial and industrial facilities is such that it would be more economical, feasible, and of greater benefit to the regulated business community to utilize the services of COUNTY to fulfill the commercial/industrial stormwater program requirements of the Permit; and

WHEREAS, Article 11, section 8 of the California Constitution provides that a county may agree with a city within its borders to performed specified municipal functions, if provided by their respective charters, and the City and County Charters allow the City Council and the Board of Supervisors, respectively, to enter into agreements for the performance of municipal functions by the County; and

WHEREAS, to the extent that amendments to the CITY's Stormwater Ordinance are needed to authorize COUNTY to administer and enforce the Stormwater Ordinance for such commercial and industrial facilities, CITY staff intends to develop and recommend such amendments to the City Council; and

WHEREAS, COUNTY and CITY desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties hereto agree as follows:

I. SCOPE OF SERVICES

COUNTY shall provide services in the amount, type and manner described in Exhibit "A", which is attached hereto and incorporated herein.

CITY shall provide services in the amount, type and manner described in Exhibit "B", which is attached hereto and incorporated herein.

**CITY
AGREEMENT NO. 2003-221**

II. COST SHARE

Each party shall be responsible for the costs of implementing their respective services as described in Exhibits "A" and "B".

III. TERM

This Agreement shall be effective and commence as of the date first written above and shall end on June 30, 2010, unless sooner terminated as provided herein.

IV. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by certified mail-return receipt requested, addressed as follows:

TO COUNTY

DIRECTOR
Sacramento County Environmental
Management Department
8475 Jackson Road, Suite 230
Sacramento, CA 95826

TO CITY

Director of Utilities
Department of Utilities
City of Sacramento
1395 35th Avenue
Sacramento, CA 95822

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt. Notice shall be deemed effective on the date of receipt.

V. COMPLIANCE WITH LAWS

CITY and COUNTY and their respective officers and employees shall observe and comply with all applicable Federal, State, County and City laws, regulations and ordinances, including but not limited to laws, regulations and ordinances governing conflict of interest.

VI. EMPLOYMENT STATUS OF PERSONNEL

1. Any persons employed by COUNTY for the performance of services pursuant to this Agreement shall remain employees of COUNTY, shall at all times be under the direction and control of the COUNTY, and shall not be considered employees of the CITY. All persons employed

by the COUNTY to perform services pursuant to this Agreement shall be entitled solely to the rights and privileges afforded to COUNTY employees and shall not be entitled, as a result of providing services hereunder, to any additional rights or privileges that may be afforded to CITY employees.

2. For the purpose of performing the services provided for in this Agreement, and for the purpose of giving official status to the performance thereof where necessary, every COUNTY officer and employee engaged in the performance of any service hereunder shall be deemed to be an agent of the CITY while performing such services for CITY, provided that such services are within the scope of this Agreement, are purely municipal functions and are performed as authorized by the Sacramento City Code. Notwithstanding the agency relationship established by this subsection, the CITY shall not be liable for any act or omission of any COUNTY officer or employee.
3. CITY shall not be liable for the payment of any salaries, wages, compensation or other benefits to any COUNTY employee performing services pursuant to this Agreement, or for compensation or indemnity to any COUNTY employee for injury or sickness arising out of his or her employment with the COUNTY and providing services pursuant to this Agreement.
4. COUNTY hereby indemnifies and holds CITY harmless from any and all claims that may be made against CITY based on any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

VII. SHARE OF LIABILITIES

Notwithstanding any provision hereof to the contrary, if the Regional Board or other regulatory agency imposes penalties on the CITY, or any third party files a lawsuit against the CITY, based on any violation of the Permit by CITY, and such violation is related to any activities performed by either party under this Agreement, each party shall be responsible for the costs of such penalties or third party lawsuits to the extent that such penalties or lawsuits arise from activities performed or required to be performed by that party, its officers, directors, agents, employees, and volunteers, under this Agreement.

VIII. INDEMNIFICATION

City shall defend, indemnify and hold harmless County, its Board of Supervisors, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages, and costs, including reasonable attorneys' fees, arising out of or resulting from the

performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of City officers, directors, agents, and employees (including its volunteers and students).

County shall defend, indemnify, and hold harmless City, its City Council, officers, directors, agents, employees, and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of County's Board of Supervisors, officers, directors, agents, and employees (including its volunteers and students).

It is the intention of County and City that the provisions of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers and students, County's Board of Supervisors, and City's City Council. It is also the intention of County and City that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers and students, County's Board of Supervisors and City's City Council.

IX. SUBCONTRACTS, ASSIGNMENT

1. Any subcontracting will be subject to all applicable provisions of this Agreement. Subcontracting services delivered under this Agreement shall not in any way relieve COUNTY of any duty or responsibility under this Agreement and COUNTY shall remain primarily obligated for the performance of all services.
2. This Agreement is not assignable by COUNTY in whole or in part, without the prior written consent of CITY.

X. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder.

XI. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be

construed or interpreted more favorably for one party on the basis that the other party prepared it.

XII. TERMINATION

Either party may terminate this Agreement upon one hundred and eighty (180) days written notice to the other party. Notice shall be deemed served on the date of mailing.

XIII. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COUNTY and CITY regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and CITY regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**COUNTY OF SACRAMENTO, a political subdivision of
the State of California**

By:



Director
Environmental Management Department

Date: 11-19-03

Reviewed and approved by County Counsel:



Deputy County Counsel

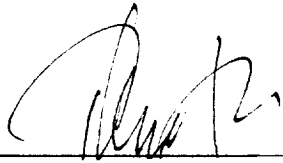
Date: 11-19-03

COUNTY OF SACRAMENTO AGREEMENT NO. _____

CITY
AGREEMENT NO. **2003-221**

**CITY OF SACRAMENTO,
a charter municipal corporation**

By:

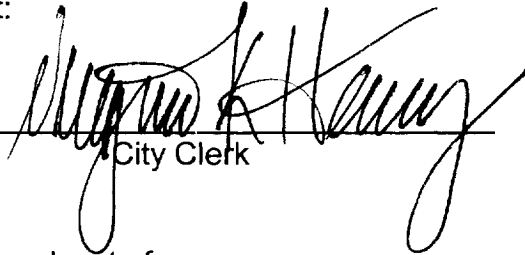


Tom Lee
Deputy City Manager

Date: 11-25-03

For: Robert Thomas
City Manager

Attest:



City Clerk

Date: _____

Approved as to form:



City Attorney

Date: 11-19-03

**EXHIBIT A to Agreement
between the COUNTY OF SACRAMENTO,
hereafter referred to as "COUNTY," and
the CITY OF SACRAMENTO, hereafter referred to as "CITY"**

I. SCOPE OF SERVICES

COUNTY DESCRIPTION OF SERVICES

COUNTY will work within a cooperative relationship with CITY and provide the following services:

1. Administer and enforce CITY's Stormwater Ordinance with respect to commercial and industrial facilities within the CITY.

- A. COUNTY will administer and enforce CITY's Stormwater Ordinance with respect to commercial and industrial facilities within the incorporated CITY area, to the extent that COUNTY administration and enforcement is authorized by the Stormwater Ordinance or any amendments thereto adopted by the Sacramento City Council.

2. Provide inspections at commercial and industrial facilities within the incorporated CITY area as required by California Regional Water Quality Control Board Order # R5-2002-0206 (Permit) consistent with applicable provisions of the Stormwater Ordinance.

- A. COUNTY will complete a stormwater compliance inspection at each eligible commercial and industrial facility at least once every three years.
- B. COUNTY will, in coordination with CITY, develop inspection form(s) to be used by COUNTY personnel.
- C. COUNTY will develop protocols to complete required area survey activities to ensure that new facilities are incorporated into the stormwater inspection and enforcement program and will provide, at a minimum, annual updates of database.
- D. COUNTY will distribute at the time of inspection any educational materials provided by CITY for such distribution.

3. Provide follow-up inspection and progressive enforcement protocols, including a written enforcement policy, consistent with the requirements of the Permit and applicable provisions of the Stormwater Ordinance.

- A. In coordination with CITY, COUNTY will develop and, as needed, modify those protocols, to ensure compliance with the Permit
- B. COUNTY will provide enforcement assistance, as requested, by the Regional Board.

4. Provide a funding mechanism for commercial and industrial facility stormwater compliance inspection program.

- A. COUNTY will quantify necessary COUNTY resources required to achieve compliance with the Permit as it applies to inspection, enforcement, and other related activities for commercial and industrial facilities.
- B. COUNTY will develop and present to the Sacramento County Board of Supervisors a proposed resolution and/or ordinance that authorizes COUNTY to recover program costs resulting from the expenditure of resources required for program implementation. Such a resolution and/or ordinance will include a fee schedule detailing annual fees for all facilities included in the commercial and industrial stormwater compliance program.

5. Provide support for presentations before the Sacramento City Council and other groups or individuals.

If requested, COUNTY will assist in the presentation of stormwater related issues before the City Council and any other groups or individuals.

6. Provide Adequate Industry Notification.

COUNTY, along with CITY, will conduct workshops and other outreach efforts to inform the regulated community of pending fee and significant compliance issues.

7. Provide for additional staff and training.

- A. COUNTY will develop a work plan documenting additional staff required for the commercial and industrial stormwater compliance program implementation.
- B. COUNTY will arrange for and secure needed staff training.

8. Develop adequate record-keeping and notification system.

A. COUNTY will review record keeping and notification requirements required by the Permit and incorporate these requirements into its existing record keeping and outside agency reporting protocols.

B. COUNTY will make the necessary additions and/or adjustments to its existing database to comply with data management requirements contained in the Permit.

9. Appointment of a Senior Level Manager as liaison to CITY for coordination with the commercial and industrial stormwater compliance program.

COUNTY will designate a senior level position to oversee all stormwater program activities and act as the primary liaison with CITY.

10. Provide for complaint response.

A. COUNTY will develop a methodology that outlines how complaints should be categorized and the appropriate level of response that is required in response to complaints for those industries within COUNTY's inspection jurisdiction.

B. COUNTY, along with CITY, will work directly with the Regional Board to develop and modify this proposed methodology, as needed, to ensure Permit compliance.

11. Provide for reporting and documentation.

Not later than August 1st of each year, COUNTY will provide CITY any inspection/enforcement/complaint data or documentation needed by CITY to achieve compliance with reporting requirements contained in the Permit. This will include at a minimum:

- Number of businesses/facilities inspected
- Number of enforcement actions taken, including the amount of fines or monies assessed and collected
- Number of complaints referred to COUNTY by the Regional Board
- Total number of complaint responses by COUNTY
- Enforcement assistance provided to the Regional Board
- Inspection or complaint response records for specific facilities requested by CITY on an as needed basis.

12. Provide for progress evaluation.

- A. COUNTY and CITY shall meet on a quarterly basis for program updates and coordination purposes. COUNTY and CITY will meet semi-annually to evaluate program effectiveness.
- B. As with its other regulatory programs, COUNTY will prepare required records or documentation relating to the storm water program for the purpose of a financial review or analysis by the City of Sacramento and County Auditor(s).

CITY
AGREEMENT NO. 2003-221

**EXHIBIT B to Agreement
between the COUNTY OF SACRAMENTO,
hereafter referred to as "COUNTY," and
the CITY OF SACRAMENTO, hereafter referred to as "CITY"**

I. CITY DESCRIPTION OF SERVICES

Consistent with applicable provisions of the Sacramento City Charter and City Code, CITY will work within a cooperative relationship with COUNTY and provide the following services:

1. Assist in the specification of the commercial and industrial facilities to be inspected, as defined by California Regional Water Quality Control Board Order # R5-2002-0206 (Permit).

CITY will work with COUNTY to develop an inclusive inventory of commercial and industrial facilities that are subject to inspections, enforcement, and other associated activities, as defined by the Permit.

2. Provide support for presentations before the Sacramento County Board of Supervisors and other groups or individuals.

If requested by COUNTY, CITY will assist in the presentation of stormwater related issues before the Board of Supervisors and any other groups or individuals.

3. Modification of Local Storm Water Ordinance.

CITY staff will develop and present to the City Council proposed amendments to CITY's existing Stormwater Ordinance to include authorization for COUNTY to implement the storm water compliance program for commercial and industrial facilities. If approved by the City Council, such amendments shall to the extent necessary authorize COUNTY to:

- Conduct all necessary inspections or re-inspections of regulated facilities within the incorporated CITY area.
- Take any necessary enforcement actions as authorized by the City Code and consistent with a CITY approved enforcement plan.
- Investigate and follow-up referred complaints at eligible facilities.
- Establish and collect fees necessary to recover program implementation costs.

4. Provide Adequate Industry Notification.

CITY will develop initial industry notification and educational materials and, when requested by the COUNTY, will participate with County in workshops and other outreach efforts to inform the regulated community of pending fee and significant compliance issues.

5. Assist in staff training.

If requested by COUNTY, CITY will provide assistance in developing staff training modules and materials. CITY will also assist, if requested, in the development of a work plan documenting additional staff required for the implementation of the commercial and industrial stormwater compliance program.

6. Appointment of a Senior Level Manager, or a Senior Level Manager's designated representative, as liaison to COUNTY for coordination with the commercial and industrial stormwater compliance program.

CITY will appoint a senior level manager or identify a senior level manager designee to oversee the commercial and industrial facility stormwater program activities and act as the primary liaison with COUNTY.

7. Provide for complaint response.

CITY will be responsible for complaint response for those industries in the CITY that are not specified by the Permit or the Regional Board to be included in the commercial and industrial inspection program.

8. Reporting and documentation requirements.

CITY will work with COUNTY to develop specific report format(s) including necessary data elements needed to comply with reporting requirements contained in the Permit.

9. Other Additional Services.

CITY shall develop and provide to COUNTY, educational outreach materials to be distributed during commercial and industrial inspections.

RESOLUTION NO. 2003-856

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF DEC 09 2003

RESOLUTION AUTHORIZING COOPERATIVE AGREEMENT BETWEEN CITY OF SACRAMENTO AND COUNTY OF SACRAMENTO FOR PERFORMANCE OF STORM WATER ORDINANCE COMPLIANCE INSPECTIONS AT INDUSTRIAL AND COMMERCIAL FACILITIES

BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

WHEREAS, the EPA has delegated to the State of California the authority to issue NPDES permits; and

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region ("Regional Board") has been charged by the California State Water Resources Control Board with the responsibility to issue NPDES permits within the Central Valley Region; and

WHEREAS, on December 6, 2002, the Regional Board adopted a NPDES stormwater permit No. CAS0082597, Order No. R5-2002-0206 (Permit) for the County of Sacramento and the Cities of Citrus Heights, Elk Grove, Folsom, Galt, and Sacramento (Permittees); and

WHEREAS, the Permittees must comply with the Permit, its successor Permit, and other stormwater compliance documents subject to modification by the Regional Board; and

WHEREAS, the City of Sacramento (Sacramento) is responsible for overseeing regulatory compliance with the Permit for areas within its jurisdiction; and

WHEREAS, Sacramento and Sacramento County(County) wish to jointly participate in conducting storm water inspections at industrial and commercial facilities for the purpose of complying with the Permit; and

WHEREAS, a cooperative effort between Sacramento and County would be beneficial to the region by strengthening regional partnerships to enhance the quality of life.

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2003-856

DATE ADOPTED: DEC 09 2003

RESOLUTION NO.: 2003-856
DATE ADOPTED: DEC 09 2003